Kailash Chand Sharma vs State Of Rajasthan & Ors on 30 July, 2002

Author: P.Venkatarama Reddi

Bench: D.P. Mohapatra, P.Venkatarama Reddi

CASE NO.:
Appeal (civil) 4417 of 2002

PETITIONER:
KAILASH CHAND SHARMA

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS

DATE OF JUDGMENT: 30/07/2002

BENCH:
D.P. Mohapatra & P.Venkatarama Reddi.

JUDGMENT:

(Arising out of S.L.P. No. 1824 of 2000).

With CA Nos.4418-21, 4423, 4427-4429, 4431, 4432, 4437, 4438-39, 4434, 4443, 4444, 4445, 4446-47, 4449, 4450, 4451, 4452, 4453, 4454, 4455, 4456, 4457, 4458-60, 4461, 4462, 4463, 4464, 4465, 4466, 4435, 4436/02 @ SLP Nos. 10778-81/2001, 10929, 14560-63/2001, 15579, 4979, 5017-18, 5021, 20286, 20297, 20296, 20293-94, 20298, 11496, 11642, 11619, 11618, 11614, 20300, 11789, 11620, 12011-13, 11879, 20289, 12289, 20290, 11359, 20292 of 2001 and SLP Nos.2297, 2503 of 2000 and W.P. No. 542/2000 and CA Nos.4440 & 4441-4442 @ SLP Nos. 23010, 23011-12/2001.

P.Venkatarama Reddi, J.

Leave to appeal granted. Consequently, the appeals are taken on file and being disposed of by this common Judgment.

The selections held and the consequential appointments made to the posts of primary school teachers by the Zila Parishads of various districts in the State of Rajasthan during the year

1998-1999 have given rise to these appeals. The full Bench judgment of Rajasthan High Court dated 18.11.1999 in Kailash Chand Sharma (Petitioner in first of the appeals corresponding to SLP No. 1824/2000) Vs. State of Rajasthan and connected Writ Petitions are under challenge in these appeals apart from the Division Bench Judgment in State of Rajasthan Vs. Naval Kishore Sharma. The full Bench followed its earlier judgment in Deepak Kumar Suthar Vs. State of Rajasthan (W.P. No. 1917/1995) and disposed of the Writ Petitions on the same terms as in the previous full Bench reference case. At the outset, it may be stated that the judgment of the full Bench rendered on October 21, 1999 in Deepak Kumar's case (reported in 1999(2), RLR 692) was in relation to the selection of teachers Grade II and Grade III which was pursuant to the advertisement issued by the Director, Primary and Secondary Education during the year 1995. The said posts of teachers Grade II and Grade III are borne in State cadre under the administrative control of Education Department of the State Government. The second full Bench judgment, as already noted, was in the context of selections to the posts of teachers district-wise coming within the fold of respective Zila Parishads. In the impugned judgment the full Bench, however, did not see any impediment in applying the ratio of the previous judgment. The full Bench observed that "merely because the employment relates to the Panchayats, that does not make any difference in the light of the law laid down in the full Bench judgment aforementioned". What was called in question by the unsuccessful candidates who filed their applications and appeared before the 0.1 Selection Boards was the award of bonus marks to the applicants belonging to the District and the rural areas of the district concerned. The first full Bench (in the case of Deepak Kumar Vs. State) held that award of such bonus marks was unconstitutional and the relevant clause in the circular providing for bonus marks was void. The learned Judges observed that "this kind of weightage would give a complete go-bye to the merit of the candidates and would seriously affect the efficiency of administration/teaching". The full Bench answered the reference holding that "any kind of weightage/advantage in public employment in any State service is not permissible on the ground of place of birth or residence or on the ground of being a resident of urban area or rural area.". Having so declared the law, the full Bench gave the following directions in the concluding para of the judgment :

> "Instead of sending the matter to the appropriate bench, we think it proper to dispose of this petition with a direction that no relief can be granted to the petitioners as they could not succeed to get the place in the merit list even by getting 10 bonus marks being residents of urban area, for which they are certainly not entitled. More so, the petitioners have not impleaded any person from the select list, not even the last selected candidate. Thus, no relief can be granted to them inspite of the fact that the appointments made in conformity of the impugned Circular have not been in consonance with law. However, we clarify that any appointment made earlier shall not be affected by this judgment and it would have prospective application".

It is this decision that was followed by the full Bench in the impugned judgment and the batch of Writ Petitions were disposed of accordingly. Against this judgment SLPs were filed by the original writ petitioners (six in number) as well as the State Government and the Zila Parishad. After the full Bench judgment one more batch of writ petitions came to be disposed of by a learned single Judge of the High Court on 26.2.2001 directing a fresh merit list to be prepared in respect of the candidates who were not appointed on or before 21.10.1999 without regard to the bonus marks.

Appeals against this judgment were filed by the State Government and other authorities. The Division Bench by its order dated 13.4.2001 dismissed those appeals. Questioning the same, SLPs were filed by the State as well as certain affected parties who were granted leave to appeal. Coming to the specific facts relevant to the present appeals, at the threshold, we should make a reference to the circular issued by the Department of Rural Development and Panchayat Raj bearing the date 10.6.1998, which deals with the subject of procedure to be followed for appointment to the vacant posts of teachers during the years 1998-1999 by way of direct recruitment. This circular was issued in supercession of earlier orders on the subject. It is seen from the circular that 5847 posts were sanctioned by the Finance Department of the Government and the appointments were to be made to the vacancies for which sanction was accorded. The Chief Executive Officers-cum-Secretaries of Zila Parishads were required to issue the advertisements by 15.6.1998 and to have them published in the newspapers by 20.6.1998. According to the schedule given in the circular, the process of issuing appointment orders was to be completed by 14.8.1998. That it did not actually happen is a different matter. The circular which is quite comprehensive deals with various aspects. We are only concerned with the following provisions in the circular having a bearing on the determination of merit of the applicant/candidate. It reads as follows :

> "This year, determination of merit has been amended and determination of merit will be done as follows :-
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> I. Marks for educational qualification :- S.No. Qualification Weightage
>
> 1. Secondary Examination 50%
>
> 2. Senior Secondary Examination 20%
>
> 3. S.T.C./B.Ed. 30% II. Fixation of Bonus marks for domiciles Domiciles of Rajasthan - 10 marks Resident of District - 10 marks Resident of Rural area of Distt. - 5 marks The other criteria evolved for award of marks under the head 'academic achievements', bonus marks for sports etc. need not be quoted.

More particularly, we are concerned with Para II (supra) i.e., bonus marks for 'domiciles'. It may be mentioned that there is no dispute in so far as the award of bonus marks to the 'domiciles' of the State of Rajasthan. The controversy is only with regard to Items 2 and 3 i.e. 10 marks for residence in the District concerned and 5 marks for residence in rural areas of the concerned district. It may be noted that there was no written examination. The interview was of a formal nature as there was no assessment of comparative merit therein.

The above Circular is traceable to the power conferred on the State Government under the proviso to Rule 273 occurring in Chapter XII of the Rajasthan Panchayat Raj Rules 1996, according to which the selection for various posts shall be made in accordance with the general directions given by the State Government from time to time in this respect. In order to give effect to the orders of the State Government the Zila Parishads issued advertisements round about 15th June, 1998 calling for applications. It is seen from the advertisement issued by the Zila Parishad, Barmer, the following

qualifications are mentioned therein:-

> "1. Senior secondary under New (10+2) scheme from Secondary Education Board, Rajasthan or Higher secondary or equivalent under the old scheme or secondary school certificate or equivalent from secondary school Education Board Rajasthan with 5 subjects including Sanskrit, Maths, English and Hindi."

Some of the candidates hailing from different districts or towns who were not eligible for bonus marks (10+5) filed the Writ Petitions under Article 226 of the Constitution questioning the circular of the State Government (Rural Development and Panchayat Raj Department) prescribing the bonus marks as afore-mentioned and seeking appropriate directions for their consideration without reference to bonus marks. This was done after they appeared for formal interviews. By then, the select lists were published in some Districts and in some other Districts, though they were presumably prepared, further action was kept in abeyance for certain reasons, including the pendency of the Writ Petitions. When the matter came up for hearing before a learned single Judge, he felt that earlier Division Bench decisions of the Court in Arvind Kumar Gochar and Baljeet Kaur's case needed reconsideration. Accordingly, the learned single Judge suggested to the learned Chief Justice to constitute full Bench. At the same time, he stayed the final selection pursuant to various advertisements involved in the writ petition for three months in the hope that in the meanwhile the larger Bench will decide the issue. That is how the full Bench was constituted. To recapitulate the sequence, it may be noted that the first full Bench decision in Deepak Kumar's case relating to appointments in the Education Department was decided on 21.10.1999. The second full Bench dealing with the cases on hand gave its verdict on 18.11.1999. During the interregnum between the first full Bench judgment and the second full Bench decision, it appears that appointment orders were issued to the selected candidates in some of the districts. The process of issuing appointment letters seems to have continued even after the second full Bench judgment i.e. after 18.11.1999.

In this factual background, the S.L.Ps came to be filed in this Court. Those who have filed S.L.Ps fall under four categories:

> (1) Those filed by the original writ petitioners who were aggrieved by the direction in the judgment either confining its application prospectively or denying relief on the ground that writ petitioners would not have been selected even if 10 or 15 bonus marks are excluded. The appellant in the first of these appeals Kailash Chand Sharma belongs to this category. He hails from the district of Karouli and he applied for the job in Barmer district.
>
> (2) Those candidates who have not been offered appointment, though selected on the strength of the weightage accorded for residents of the district and rural areas comprised therein.
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> (3) Those selected on the basis of weightage and appointed after 21-10-99, whose appointments were likely to be cancelled in view of the directions in the impugned judgments. (4) Official respondents in the Writ Petitions, viz., State of Rajasthan and

Zila Parishads.

In categories 2 and 3 above, persons who were not parties in the High Court have sought permission of this Court to file SLPs, which was granted. The first and foremost question that would arise for consideration in this group of appeals is, whether the circular dated 10.6.1998 providing for bonus marks for residents of the concerned district and the rural areas within that district is constitutionally valid tested on the touch stone of Article 16 read with Article 14 of the Constitution? It is on this aspect, learned senior counsel appearing for the candidates concerned have argued at length with admirable clarity, making copious reference to several pronouncements of this Court.

There can be little doubt that the impugned circular is the product of the policy decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Articles 14 and 16 of the Constitution. If the policy decision, which in the present case has the undoubted effect of deviating from the normal and salutary rule of selection based on merit is subversive of the doctrine of equality, it cannot sustain. It should be free from the vice of arbitrariness and conform to the well-settled norms both positive and negative underlying Articles 14 and 16, which together with Article 15 form part of the Constitutional code of equality.

In order to justify the preferential treatment accorded to residents of the district and the rural areas of the district in the matter of selection to the posts of teachers, the State has come forward with certain pleas either before the High Court or before this Court. Some of these pleas are pressed into service by the learned counsel appearing for the parties who are the possible beneficiaries under the impugned order of the Govt. Such pleas taken by the State Government and from which support is sought to be drawn by the individual parties concerned will be referred to a little later. Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio- economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Art. 16(3). An argument of this nature flies in the face of the peremptory language of Article 16 (2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself be it be within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into Districts with a view to offer employment to the residents of that District on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16. Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted that in the allied Article Article 15, the word 'residence' is omitted from the opening clause prohibiting discrimination on specified

grounds. Clauses (3) and (4) of Article 16 dilutes the rigour of clause (2) by (i) conferring an enabling power on the Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16 (2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the Article. Here, we should make note of two things: firstly, discrimination only on the ground of residence (or place of birth) in so far as public employment is concerned is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression 'only'.

Let us now turn our attention to some of the decided cases. As far back as in 1969 a Constitution Bench of this Court in A.V.S Narasimha Rao Vs. State of A.P. (1970 (1) SCR 115) declared that the law enacted by the Parliament in pursuance of Clause (3) of Article 16 making a special provision for domicile within the Telegana region of the State of Andhra Pradesh for the purpose of public employment within that region and the rules made thereunder as ultra vires the Constitution. Pursuant to the enabling power conferred under Section 3 of the Public Employment (Requirement as to Residence) Act, Rules were made making a person ineligible for appointment to a post within the Telengana area under the State Government of A.P. or to a post under a local authority in the said area unless he has been continuously residing within the said area for a period of not less than 15 years immediately preceding the prescribed date. The Government issued an order relieving all 'non-domicile' persons appointed on or after 1.11.1956 to certain categories of posts reserved for domiciles of Telengana under the A.P. public employment (Requirement as to Residence) Rules. Such incumbent of post was to be employed in the Andhra region by creating a supernumerary post, if necessary. This legislative and executive action was struck down by this Court. After referring to Article 16, the Court observed:

> "The intention here is to make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception..
>
> The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law, which prescribes any requirement as to residence within the State or Union territory prior to employment or appointment to an office in that State or Union territory. Two questions arise here, firstly, whether Parliament, while prescribing the requirement, may prescribe the requirement of residence in a particular part of the State and,

> secondly, whether Parliament can delegate this function by making a declaration and leaving the details to be filled in by the rule making power of the Central and State Governments."

The argument that a sweeping power was given to the Parliament to make any law as regards residential requirement was repelled thus:

> " By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3) was made. Even so, that clause spoke of residence within the State. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupte that the Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate."

Thus, this Court was not inclined to place too wide an interpretation on Art. 16(3), keeping broadly in view the constitutional philosophy. In Pradeep Jain Vs. Union of India (AIR 1984 SC 1420) though the Court was concerned with the question whether residential requirement or institutional preference in admissions to technical and medical colleges can be constitutionally permissible in the light of Article 15 (1) and 15 (4), Bhagwati, J. speaking for the Court expressed his prima facie opinion thus as regards residential requirement in the field of public employment:

> " We may point out at this stage that though Art. 15(2) bars discrimination on grounds, not only of religion, race, caste or sex but also on place of birth, Art 16 (2) goes further and provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in State employment. So far as employment under the State or any local or other authority is concerned, no citizen can be given preference nor can any discrimination be practised against him on the ground only of residence. It would thus appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State . But, Art. 16(3) provides an exception to this rule by laying down that Parliament may make a law "prescribing, in regard to a class or classes of employment or appointment to an

> office under the government of, or any local or other authority in, a State or Union Territory, any requirement as to residence within that State or Union territory prior to such employment or appointment." Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a State Government. But even so, without any parliamentary enactment permitting them to do so many of the State Governments have been pursuing policies of localism since long and these policies are now quite widespread. Parliament has in fact exercised little control over these policies formulated by the States. The only action, which Parliament has taken under Art. 16(3) giving it the right to set a residence requirement has been the enactment of the Public Employment (requirement as to Residence) Act, 1957 ..
>
> There is therefore, at present no parliamentary enactment permitting preferential policies based on residence requirement except in the case of Andhra Pradesh, Manipur, Tripura and Himachal Pradesh where the Central government has been given the right to issue directions setting residence requirements in the subordinate services. Yet, in the face of Art. 16(2) some of the States are adopting 'sons of the soil' policies prescribing reservation or preference based on domicile or residence requirement for employment or appointment to an office under the Government of a State or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the State. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal."

However, in so far as admissions to educational institutions such as medical colleges are concerned, it was pointed out that Article 16(2) has no application and residential requirement cannot per se be condemned as unconstitutional. It was observed that the only provision of the Constitution on the touchstone of which such residence requirement can be tested is Article 14. On a conspectus of earlier decisions of this Court, the learned Judge summarised the position thus in so far as admissions to professional education colleges are concerned: -

> "It will be noticed from the above discussion that though intra-State discrimination between persons resident in different districts or regions of a state has by and large been frowned upon by the Court and struck down as invalid as in Minor P. Rajendran's case (AIR 1968 SC 1012) (supra) and Perukaruppan's case (AIR 1971 Sc 2303) (supra), the Court has in D. N. Chanchala's case and other similar cases upheld institutional reservation effected through universitywise distribution of seats for admission to medical colleges. The Court has also by its decisions in D.P. Joshi's case (AIR 1955 SC 334) and N. Vasundhara's case (AIR 1971 SC 1439) (supra) sustained the constitutional validity of reservation based on residence requirement within a State for the purpose of admission to medical colleges. These decisions which all relate to admission to MBBS course are binding upon us and it is therefore not possible for us to hold, in the face of these decisions that residence requirement in a

> State for admission to MBBS course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Art. 14. We must proceed on the basis that at least so far as admission to MBBS course is concerned, residence requirement in a State can be introduced as a condition for admission to the MBBS course."

Bhagwati, J. underscored the need for evolving a policy of ensuring admissions to the MBBS course on all India basis "based as it is on the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement." But, it was observed that the realization of such ideal may not be realistically possible in the present circumstances. It was then concluded:

> "We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalize opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State."

It is not necessary for us to refer in extenso to various other decisions of this Court dealing with the scope of Article 15 (1) and 15 (4) vis a vis reservations based on residence within a University or other local area for the purpose of admissions to professional colleges. A summary of those decisions has been given by Bhagwati, J. in the passage extracted (supra). The requirement of residence and education within the university area for allocation of seats in medical colleges affiliated to that university was upheld on special considerations noticed in that judgment.

We may, however, advert to one recent decision wherein the view taken in Rajendran's case (supra) was reiterated. In Govind A. Mane Vs. State of Maharashtra, (2000 (4) SCC 200) it was laid down:

> "Since it is not disputed by the respondents that for the purpose of admission to B.Ed course, seats were distributed districtwise without indicating any material to show the nexus between such distribution and the object sought to be achieved, it would be violative of Article 14 of the Constitution."

The lack of material to establish nexus between the geographical classification and the object sought to be achieved thereby was thus held to be violative of Article 14.

The question which fell for consideration of this Court whether the action of the State in Pradip Tandon vs. State of U.P. (1975 (1) SCC 267) was in reserving certain percentage of seats available in medical colleges in favour of candidates from rural areas, hill areas and Uttarakhand was justified? The reservation was sought to be justified from the stand point of Article 15(4). Repelling the contention, Ray, C.J., speaking for a three- Judge Bench observed that "the Constitution does not

enable the State to bring socially and educationally backward areas within the protection of Article 15(4)". It was pointed out that the accent in Article 15(4) is on classes of citizens :

> "The expression "classes of citizens" indicates a homogeneous section of the people who are grouped together because of certain likenesses and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens."

Eschewing the test of poverty as the determining factor of social backwardness this Court made the following pertinent observations :

> " A division between the population of our country on the ground of poverty that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people on the other that the rural people are socially and educationally backward class.
>
> Some people in the rural areas may be educationally backward, some may be socially backward, there may be few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.
>
> Eighty per cent of the population in the State of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are not of the same kind. Their occupation is different. Their standards are different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State."

It was further observed :

> "The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas."

It was then observed that "the present case of classification of rural areas is not one of under-classification. This is a case of discrimination in favour of the majority of rural population to the prejudice of the students drawn from the general category".

However, the learned Judges took the view that the hill and Uttarakhand areas in U.P. State are 'instances' of socially and educationally backward classes of citizens and that those living in the hill

and Uttarakhand areas can be considered to be socially and educationally backward classes of citizens. The social, economic and educational factors justifying such conclusion were set out succinctly by the learned Judges. Ultimately the reservation in favour of candidates from rural areas was declared unconstitutional while upholding reservation for the candidates from hill and Uttarakhand areas. The principle laid down in the above decisions, though in the context of interpretation of Article 15(4) is an answer to the contention of the State that bonus marks are provided for uplifting the rural educated persons so as to utilize their services for the upliftment of the fellow rural people through the spread of education. Prohibition of discrimination on the basis of place of residence in the context of public employment is an additional factor which makes it well nigh impossible to accept the above plea.

Before examining the further pleas in support of the impugned action taken by the State it would be apposite to refer to the decision in State of Maharashtra Vs. Raj Kumar (AIR 1982 SC 1301), on which reliance has been placed by the High Court and reference has been made in the course of arguments before us. In that case a rule was made by the State of Maharashtra that a candidate in order to be treated as a rural candidate must have passed SSC Examination which is held from a village or a town having only 'C' type municipality. The object of the rule, as pointed out by this Court, was to appoint candidates having full knowledge of rural life and its problems so that they would be more suitable for working as officers in rural areas. The rule was struck down on the ground that there was no nexus between classification made and the object sought to be achieved because "as the rule stands any person who may not have lived in a village at all can appear for SSC examination from a village and yet become eligible for selection". The rule was held to be violative of Articles 14 and 16. Another point discussed by the Court was about the propriety of giving bonus marks for the rural candidates and the Court held thus :

> "The rules also provide that viva-voce Board would put relevant questions to judge the suitability of candidate for working in rural areas and to test whether or not they have sufficient knowledge of rural problems, and this no doubt amounts to a sufficient safeguard to ascertain the ability of the candidate regarding his knowledge about the affairs of the village. In such a situation there was absolutely no occasion for making an express provision for giving weightage which would virtually convert merit into demerit and demerit into merit and would be per se violative of Article 14 of the Constitution as being an impermissible classification. The rule of weightage as applied in this case is manifestly unreasonable and wholly arbitrary and cannot be sustained."

This decision is not a direct authority for the proposition that a citizen cannot be preferred for employment under the State on the ground that he or she hails from rural area. However, what has been laid down in regard to the first point assumes some relevance in the cases on hand. The criterion for identifying a rural candidate was held to be irrelevant as it had no nexus with the object sought to be achieved. In the present case, the position is much worse as the impugned circular does not spell out any criteria or indicia to determine whether an applicant is a rural candidate.

Realising the difficulty in sustaining the impugned circular of the Government merely on the basis of classification between persons residing in rural areas and towns, Mr. Rajeev Dhawan, learned Senior counsel as well as the learned counsel appearing for the State, sought to draw support from the plea taken by the State in the counter affidavit filed in SLP No. 10780/2001 that the award of bonus marks to the residents of rural areas is a measure of affirmative action or compensatory discrimination to help the disadvantaged sections, namely, the rural people. It is trite to say that India lives in villages and inhabited predominantly by poorer sections of people. The people in the rural areas suffer many handicaps especially in the sphere of education. These factors, according to the learned counsel justify the State action to throw up better employment opportunities to the rural citizens and such act of levelling, it is contended, is nothing but an instance of protective discrimination. According to the learned counsel, the State, in the instant case, has resorted to least offensive and least obtrusive method of protecting the interests of the rural citizens instead of going in for wholesale reservation and it does not in any way violate the mandate of Art. 14 or Art.16. The learned counsel reminds us that giving relaxations and concessions to disadvantaged people are an integral part of the equality clause enshrined in Article 14.

This plea proceeds on the supposition that the proportion of employment of rural residents is much less than that of the residents in the towns; in other words, the major chunk of appointments in State services are going to those born in and brought up in towns. The other assumption underlying this argument is that the educated people in the rural areas are economically weaker than those living in towns. None of these assumptions are based upon any data or concrete material. We must say that the argument built up on this plea falls more in the realm of platitudes rather than affording a solid basis for the classification. In Nidamarti Maheshkumar Vs. State of Maharashtra (1986 (2) SCC 534), when regionwise classification for admissions to medical colleges was sought to be defended on the ground that Vidharbha and Marathwada regions are backward as compared to Pune and Bombay regions, this Court declined to accept such contention. It was observed :

> "In the first place there is no material to show that the entire region within the jurisdiction of the university in Vidharbha is backward or that the entire region within the jurisdiction of Pune University is advanced. There are quite possibly even in the region within the jurisdiction of Pune University predominantly rural areas which are backward and equally there may be in the region within the jurisdiction of the university in Vidharbha, areas which are not backward. We do not think it is possible to categorise the regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories and in any event there is no material placed before us which would persuade us to reach that conclusion."

Here too, in the absence of any material, we cannot take it for granted that the premise on which the argument is sought to be built up is correct. Similarly, when the reservations of certain percentage of seats in medical colleges in favour of candidates from rural areas was sought to be justified on economic considerations, a three Judge Bench of this Court speaking through Ray, C.J., in State of U.P. vs. Pradip Tandon (1975 (1) SCC 267) emphatically rejected the plea. We quote:

> " A division between the population of our country on the ground of poverty that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people on the other that the rural people are socially and educationally backward class.
>
> Some people in the rural areas may be educationally backward, some may be socially backward, there may be few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.
>
> The following observations may also be noticed :
>
> "The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas . The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth as that would offend Art. 15".

Though the Court was primarily dealing with an argument based on Article 15(4) and the import of the expression "socially and educationally backward classes of citizens" occurring in that sub-Article, the observations quoted above are quite relevant in testing the plea raised on behalf of the State to save the classification. In the face of what has been laid down in Pradip Tandon's case, the State cannot possibly invoke Article 16(4). Our attention has however been drawn to the following observations in Nidamarti's case (supra) in reiteration of what was said in Pradeep Jain's case (supra) :

> "It is therefore, clear that where the region from which the students of a university are largely drawn is backward either from the point of view of opportunities for medical education or availability of competent and adequate medical services, it would be constitutionally permissible, without violating the mandate of the equality clause, to provide a high percentage of reservation or preference for students coming from that region, because without reservation or preference students from such backward region will hardly be able to compete with those from advanced regions since they would have no adequate opportunity for development so as to be in a position to compete with others. By reason of their socially or economically disadvantaged position they would not have been able to secure education in good schools and they would consequently be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had best of school education. There can, therefore, legitimately be reservation or preference in their favour so far as admissions are concerned in case of a medical college which is set up or intended to cater to the needs of a region which is backward or whose alumni are

largely drawn from such backward region."

These observations, in our view, cannot be legitimately pressed into service for the purpose of justifying reservation or weightage in favour of rural candidates on the ground of nativity/residence for purposes of public employment. The difference in approach in relation to Articles 15 and 16 was indicated by Bhagwati, J. in Pradeep Jain's case and we have quoted the relevant passage extensively. It was made clear in Pradeep Jain's case that in the matter of admissions to professional colleges the considerations were different. As far as public employment is concerned, the classification on the basis of residence in a region or locality was broadly held to be constitutionally impermissible. Moreover, the preferential treatment of rural candidates in the instant case is not on the ground that they hail from the backward region. All or most of the villages in the district or the State cannot be presumed to be backward educationally or economically. Such a claim was not accepted in Pradip Tandon's case by a three Judge Bench. Even in Nidamarti's case, it was held that in absence of material, certain regions cannot be dubbed as backward.

The justifiability of the plea stemming from the premise that uplifting the rural people is an affirmative action to improve their lot can be tested from the concrete situation which confront us in the present cases. We are here concerned with the selections to the posts of teachers of primary schools, the minimum qualification being SSC coupled with basic training course in teaching. Can the Court proceed on the assumption that the candidates residing in the town areas with their education in the schools or colleges located in the towns or its peripheral areas stand on a higher pedestal than the candidates who had studied in the rural area schools or colleges? Is the latter comparatively a disadvantaged and economically weaker segment when compared to the former? We do not think so. The aspirants for the teachers jobs in primary schools be they from rural area or town area do not generally belong to affluent class. Apparently they come from lower middle class or poor background. By and large, in the pursuit of education, they suffer and share the same handicaps as their fellow citizens in rural areas. It cannot be said that the applicants from non-rural areas have access to best of the schools and colleges which the well to do class may have. Further, without any data, it is not possible to presume that the schools and colleges located in the towns-small or big and their peripheral areas are much better qualitatively, that is to say, from the point of view of teaching standards or infrastructure facilities so as to give an edge to the town candidates over the rural candidates.

We are, therefore, of the view that the first plea raised by the State which is also found in the counter-affidavit filed before the High Court (as seen from the judgment in Deepak Kumar Suthar's case) is untenable.

We now turn our attention to two other pleas more vehemently raised by Mr. Rajeev Dhawan as well as the counsel appearing for the State to justify the weightage in favour of District and rural candidates.. We may quote the averments in the counter affidavit of the State in one of the cases i.e. SLP 10780/2001:

> "These teachers were primarily recruited for primary education of the children in backward and rural districts. It is bounden duty of the State to provide free and

compulsory education to the children upto 14 years irrespective of their place and status.

It has been empirically found that the teachers recruited from urban and relatively from forward districts do not wish to go to the rural and relatively backward districts. The result is that 'teacher absenteeism' is rampant and the teachers are more interested in getting themselves transferred to relatively urban areas and forward districts. The situation is most appalling in the district of Barmer where the literacy rates is only 18.33%. Thus it had become imperative that the teachers belonging to the rural areas and belonging to certain districts should be preferred by granting certain additional marks so that there is teacher retention in those districts and rural areas and there is no depletion in the teacher strength even in the rural and backward districts. This grant of additional marks is based upon a very noble objective of providing education to all.

The other reason for differentia is based upon the vernacular language which the teachers are going to teach at the primary stage. It has been repeatedly stressed by various educational surveys that medium of instruction should be mother tongue as far as possible. The State of Rajasthan is the largest state in the country and has diverse climatic and socio-cultural zones. The dialects/languages vary according to the topography of the region ranging from the Thar Desert of the West to the sub-humid climate of the East. Each zone has its distinct language which is barely similar to that of the other regions. By enacting a policy of granting some additional marks to persons belonging to particular districts shall lead to teachers conversant in local vernacular teaching the children who some times only know the local language. That shall establish easy rapport and understanding of the children at the tender age. Thus the objective of granting additional marks shall not only lead to retention of teacher in a rural and backward district but it shall also benefit the student community as they shall have a teacher who shall be able to understand them and converse with them easily."

The two grounds pleaded in justification of preferential treatment accorded to rural area candidates found favour with the Division Bench of the High Court in Baljit Kaur's case (1992 WLR Raj. P.83) and Arvind Kumar Gochar's case (decided on 6.4.94). Shri Rajeev Dhawan appearing for the selected candidates who have filed SLP No. 10780/2001, did his best to support the impugned circular mainly on the second ground, namely, better familiarity with the local dialect. The learned counsel contends that when the teachers are being recruited to serve in Gram Panchayat areas falling within the concerned Panchyat Samiti, those hailing from the particular district and the rural areas of that district are better suited to teach the students within that district and the Panchyat areas comprised therein. He submits that the local candidates can get themselves better assimilated into the local environment and will be in a better position to interact with the students at primary level. Stress is laid on the fact that though the language/mother tongue is the same, the dialect varies from district to district and even within the district. By facilitating selection of local candidates to serve the Panchyat run schools, the State has not introduced any discrimination on the

ground of residence but acted in furtherance of the goal to impart education. Such candidates will be more effective as primary school teachers and more suitable for the job. It is therefore contended that the classification is grounded on considerations having nexus with the object sought to be achieved and is not merely related to residence. We find it difficult to accept this contention, though plausible it is. We feel that undue accent is being laid on the dialect theory without factual foundation. The assertion that dialect and nuances of the spoken language varies from district to district is not based upon empirical study or survey conducted by the State. Not even specific particulars are given in this regard. The stand in the counter affidavit (extracted supra) is that "each zone has its distinct language". If that is correct, the Zila Parishad should have mentioned in the notification that the candidates should know particular language to become eligible for consideration. We are inclined to think that reference has been made in the counter to 'language' instead of 'dialect' rather inadvertently. As seen from the previous sentence, the words dialect and language are used as interchangeable expressions, without perhaps understanding the distinction between the two. We therefore take it that what is meant to be conveyed in the counter is that each Zone has a distinct dialect or vernacular and therefore local candidates of the district would be in a better position to teach and interact with the students. In such a case, the State Government should have identified the zones in which vernacular dissimilarities exist and the speech and dialect vary. That could only be done on the basis of scientific study and collection of relevant data. It is nobody's case that such an exercise was done. In any case, if these differences exist zone-wise or region-wise, there could possibly be no justification for giving weightage to the candidates on the basis of residence in a district. The candidates belonging to that zone, irrespective of the fact whether they belong to x, y or z district of the zone could very well be familiar with the allegedly different dialect peculiar to that zone. The argument further breaks down, if tested from the stand point of award of bonus marks to the rural candidates. Can it be said reasonably that candidates who have settled down in the towns will not be familiar with the dialect of that district? Can we reasonably proceed on the assumption that rural area candidate are more familiar with the dialect of the district rather than the town area candidates of the same district? The answer to both the questions in our view cannot but be in the negative. To prefer the educated people residing in villages over those residing in towns big or small of the same district, on the mere supposition that the former (rural candidates) will be able to teach the rural students better would only amount to creating an artificial distinction having no legitimate connection to the object sought to be achieved. It would then be a case of discrimination based primarily on residence which is proscribed by Art. 16(2). Coming then to the next plea that the residents of towns, if appointed will not be willing to serve the rural areas and they will be more interested in getting themselves transferred to "relatively urban area and forward districts", does not in our view, stand a moment's scrutiny. The apprehension that 'teacher absenteeism' will be rampant if non-rural candidates are appointed, to say the least, is based on irrelevant and unwarranted assumptions. First of all, as rightly pointed out by Dr. A.M. Singhvi, postings and transfers are managerial functions. The concerned authorities in-charge cannot be heard to say that there will be undue pressures from the candidates from extraneous sources and they will have to succumb to such pressures. Secondly the question of non rural candidates trying to avoid working in villages and seeking transfer to town or urban areas does not arise for the simple reason that the appointees would have no option but to work in villages coming within the jurisdiction of the concerned Panchayat Samiti. The only other possibility is that they may like to have postings in the villages close to the town. If the non-rural candidates would like to have

postings at places close to the town, the rural area candidates may equally have the desire to get postings close to their native villages and many of them may even prefer working at places near the town. Thus desire and aspiration in regard to choosing the place of work need not be on a set pattern. Ultimately, it is a matter of regulation of postings of rural as well as non-rural candidates. As regards the candidates coming from other districts, the question of seeking inter-district transfer does not arise, as they are required to work within the particular district in which they are selected and appointed. The factors which may exist in the context of appointments to State-wide cadre does not exist here. The difficulties sought to be projected by the State appear to be more imaginary rather than real. We have, therefore, no hesitation in rejecting this argument. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to impermissible discrimination. There is no rational basis for such preferential treatment on the material available before us. The ostensible reasons put forward to distinguish the citizens residing in the State are either non-existent or irrelevant and they have no nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of Circular has the effect of diluting merit, without in any way promoting the objective. The impugned circular dated 10.6.1998 in so far as the award of bonus marks is concerned, has been rightly declared to be illegal and unconstitutional by the High Court.

One more serious infirmity in the impugned circular is that it does not spell out any criteria or indicia for determining whether the applicant is a resident of rural area. Everything is left bald with the potential of giving rise to varying interpretations thereby defeating the apparent objective of the rule. On matters such as duration of residence, place of schooling etc., there are bound to be controversies. The authorities, who are competent to issue residential certificates, are left to apply the criteria according to their thinking, which can by no means be uniform. The decision in the State of Maharashtra vs. Raj Kumar (AIR 1982 SC 1301) is illustrative of the problem created by vague or irrelevant criteria. In that case a rule was made by the State of Maharshtra that a candidate will be considered a rural candidate if he had passed SSC Examination held from a village or a town having only 'C' type municipality. The object of the rule, as noticed by this Court, was to appoint candidates having full knowledge of rural life so that they would be more suitable for working as officers in rural areas. The rule was struck down on the ground that there was no nexus between classification made and the object sought to be achieved because "as the rule stands, any person who may not have lived in a village at all can appear for SSC Examination from a village and yet become eligible for selection". The rule was held to be violative of Article 14 and 16. When no guidance at all is discernible from the impugned circular as to the identification of the residence of the applicants especially having regard to the indefinite nature of the concept of residence, the provision giving the benefit of bonus marks to the rural residents will fall foul of Art. 14.

We have now come to the close of discussion on the constitutional issue arising in the case. Now, we shall proceed to consider the question of relief. We have to recapitulate at this juncture, how the High Court in the two impugned judgments before us, addressed itself to the question of relief. There are two judgments under appeal in this batch of cases. The first is the judgment of the Full Bench dated 18.11.1999 in Kailash Chand's case. The second is the judgment of the Division Bench dated 13.4.2002 in a batch of appeals filed by the State against the decision of the learned single

Judge disposing of the Writ Petitions.

In Kailash Chand's case, the earlier Full Bench judgment in Deepak Kumar's case rendered a month earlier, the operative part of which has been extracted at para 3 (supra) of this judgment, was implicitly followed. No separate directions or observations are found in the full Bench judgment in Kailash Chand's case which is under appeal now. However, it has been made clear by the full Bench that the cases before it were being disposed of "in the same terms" as those contained in the earlier full Bench decision. The writ petitions were "ordered accordingly". Therefore, the operative part of the judgment in Deepak Kumar's case applies "mutatis mutandis" to the cases disposed of by the full Bench by its judgment dated 18.11.1999. According to those directions, the appointment made earlier to the judgment shall not be affected and the judgment should have prospective application in that sense. The second part to be noticed is that the full Bench (in Deepak Kumar's case) made it clear that no relief can be granted to the petitioners as they will not stand to gain even if the bonus marks are omitted. No separate finding on this aspect has been recorded by the full Bench in the impugned order.

Coming to the second batch of cases, the learned Judges of the Division Bench while reiterating the directions given by the full Bench in Deepak Kumar's case, however, dismissed the appeals, though the directions given by the learned single Judge are somewhat at variance with those granted in Deepak Kumar's case. The learned single Judge quashed the merit list prepared or in existence after 21.10.1999 (the date of judgment in Deepak Kumar's case) and directed fresh merit lists to be prepared ignoring the provision for award of bonus marks to the district and rural residents and to regulate appointments based on that fresh list, if necessary, after giving show cause notice to the appointees. The affected appointees (who were not parties before the High Court) have filed the SLPs in view of the consequential action taken by the concerned authorities. Whether the judgment should be given prospective application so as not to affect the appointments made prior to the date of the judgment i.e. 18.11.1999 is one question that has been debated before us in the background of direction given by the High Court. Counsel appearing for the original writ petitioners who succeeded in principle before the High Court contended that there is no warrant to invoke the theory of prospective overruling to validate unconstitutional appointments especially when such appointments were made during the pendency of the writ petitions and some of the appointments were made after the matter was referred to the full Bench. At any rate, it is contended that the appointments orders issued after the first full Bench judgment which was rendered on 21.10.1999 should not be validated. On the other hand, it is contended by the learned counsel appearing for the successful candidates who have been either appointed or yet to receive appointment orders that there is every justification for the prospective application of the judgment. While so contending, the learned counsel find fault with the direction of the High Court in so far as it impliedly restrains further appointments subsequent to the date of the judgment. In this connection, it is pointed out that the selections were finalized long prior to the judgment either of the first full Bench or of the second full Bench, and if there was delay in issuing appointment orders either on account of the stay order or administrative delays, the candidates selected should not be placed at a disadvantageous position when compared to the candidates appointed earlier. In other words, these parties contend that the creation of a cut-off date with reference to the appointments already made and yet to be made is unjustified and it would have been in the fitness of things if all the selected candidates are

excluded from the rigour of the judgment as a one time measure instead of creating two classes amongst them.

Arguments were addressed before us on the contours and limitations of the doctrine of prospective overruling applied in our country for the first time in Golak Nath Vs. State of Punjab (1967 (2) SCR 762) in the context of invalidity of certain constitutional amendments and extended gradually to the laws found unconstitutional or even to the interpretation of ordinary statutes. The sum and substance of this innovative principle is that when the Court finds or lays down the correct law in the process of which the prevalent understanding of the law undergoes a change, the Court, on considerations of justice and fair deal, restricts the operation of the new found law to the future so that its impact does not fall on the past transactions. The doctrine recognises the discretion of the Court to prescribe the limits of retroactivity of the law declared by it. It is a great harmonizing principle equipping the Court with the power to mould the relief to meet the ends of justice. Justification for invoking the doctrine was also found in Articles 141 and 142 which as pointed out in Golak Nath's case are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. In the aftermath of Golak Nath case, we find quite an illuminating and analytical discussion of the doctrine by Sawant, J. in Managing Director Vs. B. Karunakar (1993 (4) SCC 727). The learned Judge prefaced the discussion with the following enunciation:-

> "It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the end of justice."

Law reports are replete with cases where past actions and transactions including appointments and promotions, though made contrary to the law authoritatively laid down by the Court were allowed to remain either on the principle of prospective overruling or in exercise of the inherent power of the Court under Article 142. The learned senior counsel Mr. P.P. Rao reminds us that this power is only available to the Supreme Court by virtue of Article 142 and it is not open to the High Court to neutralize the effect of unconstitutional law by having resort to the principle of prospective overruling or analogous principle. The argument of the learned counsel, though not without force, need not detain us for the simple reason that as this Court is now seized of the matter, can grant or mould the relief, without in any way being fettered by the limitations which the High Court may have had. We are of the view that there is sufficient justification for the prospective application of the law declared in the instant cases for more than one reason and if so, the declaration of the High Court to that extent need not be disturbed.

For nearly one decade the selections made by applying bonus marks to the residents of the concerned districts and the rural areas therein were upheld by the High Court of Rajasthan. The first decision is the case of Baljeet Kaur decided in the year 1991 followed by Arvind Kumar Gochar's case decided in 1994. By the time the selection process was initiated and completed, these decisions were holding the field. However, when the writ petitions filed by Kailash Chand and others came up for hearing before a learned single Judge, the correctness of the view taken in those two decisions was doubted and he directed the matters to be placed before the learned Chief Justice for constituting a

full Bench. By the time this order was passed on 19.7.1999, we are informed that the select lists of candidates were published in many districts. On account of the stay granted for a period of three months and for other valid reasons, further lists were not published. It should be noted that in a case where the law on the subject was in a state of flux, the principle of prospective overruling was invoked by this Court. The decision in Managing Director ECIL Vs. B. Karunakar (supra) is illustrative of this view- point. In the present case, the legality of the selection process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. The cloud was cast on the said decisions only after the selection process was completed and the results were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the full Bench rendered subsequent to the selection prospectively. One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties before the High Court. May be, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the alternative, at least a few of the last candidates selected/appointed could have been put on notice; but, that was not done in almost all the cases. That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already appointed. We are not so much on the question whether the writ petitioners were legally bound to implead all the candidates selected/appointed during the pendency of the petitions having regard to the fact that they were challenging the notification or the policy decision of general application; but, we are taking this fact into consideration to lean towards the view of the High Court that its judgment ought to be applied prospectively, even if the non-impleadment is not a fatal flaw.

Prospectivity to what extent is the next question. Counsel argues that when once it is accepted in principle that past actions should not be unsettled, there is no rationale in prescribing a cut off date with reference to the date of judgment, so as to save the appointments already made and to bar the appointments to be made. It is contended that the entire selection process and the consequential appointments should be out of clutches of the judgment rendered on 18.11.99 and it would be more rational and logical to apply it to further selections. The fortuitous circumstance of not being in a position of securing appointment orders for a variety of administrative reasons should not stand in the way of candidates appointed or to be appointed after the date of judgment; otherwise, it would result in injustice and hardship to the selected candidates without any tangible benefit to the petitioners who moved the High Court for relief. It is pointed out that in some districts like Chittorgarh, Lok Sabha election programme came in the way of formal appointments orders being issued. It is further pointed out that in any case, if the judgment is to be prospectively applied as it ought to be, the application of judgment should be from the date of its pronouncement i.e. 18.11.1999 but not from 21.10.99 which is the date of decision in Deepak Kumar's case pertaining to a different selection held five years earlier.

The above argument was countered by the learned counsel appearing for the original writ petitioners contending that after the judgment of the High Court in Deepak Kumar's case (21.10.1999 is the date of judgment) in which similar provision in another circular was struck down, there was neither legal nor moral justification for making further appointments, though the

impugned judgment in Kailash Chand, was rendered on 18.11.1999. In the first SLP filed by Kailash Chand, the senior counsel Mr. Krishnamani raised a subsidiary contention that the High Court was wrong in proceeding on the assumption that his client and other similarly situated petitioners would not have got selected even if the bonus marks were ignored. In the SLP, the said petitioner furnished the particulars relating to marks secured by him and some other selected candidates. Quite rightly, the learned counsel contended that the High Court apparently could not have looked into the particulars of marks in each and every case and it would have been in the fitness of things if it were left to the concerned authorities to go into the factual details.

One more point which need mention. Some of the learned counsel argued that the unsuccessful applicants should not be allowed to challenge the selection process to the extent it goes against their interest, after having participated in the selection and waited for the result. It is contended that the discretionary relief under Article 226 should not be granted to such persons. Reliance has been placed on the decision of this Court in Madan Lal Vs. State of J & K 1995 (3) SCC 486 and other cases in support of this argument. On the other hand, it is contended that in a case of challenge to unconstitutional discrimination, the doctrine of acquiescence, estoppel and the like does not apply and the writ petitioners cannot be expected to know the constitutional implications of the impugned circular well before the selections. We are not inclined to go into this question for the reason that such a plea was not raised nor any argument was advanced before the High Court.

Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18.11.1999 in any of the districts subject to the claims of the petitioners. Accordingly, we direct :

> 1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis a vis the candidates appointed on or after 18.11.99 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18.11.1999.
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> 2. The appointments made upto 17.11.1999 need not be reopened and re-considered in the light of the law laid down in this judgment.
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> 3. Writ Petition No. 542/2000 filed in this Court under Article 32 is hereby dismissed as it was filed nearly one year after the judgment of the High Court and no explanation has been tendered for not approaching the High Court under Article 226 at an earlier point of time.

Before parting, we must say that we have moulded the relief as above on a consideration of special facts and circumstances of this case acting within the frame-work of powers vested in this Court under Article 142 of the Constitution. In so far as the relief has been granted or modified in the

manner aforesaid, this judgment may not be treated as a binding precedent in any case that may arise in future.

Another parting observation. While we realize the need to generate better employment opportunities to the people of rural backward areas and an affirmative action in this regard is not ruled out, any such action should be within the framework of constitutional provisions relating to equality. Equalising unequals by taking note of their handicaps and limitations is not impermissible under the Constitution provided that it seeks to achieve the goal of promoting overall equality. However, measures taken by the State on considerations of localism are not sanctioned by the constitutional mandate of equality. As indicated in the judgment, any attempt at giving weightage to the rural candidates should be backed up by scientific study and considerations germane to constitutional guarantee of equality. The appeals arising out of the SLPs are disposed of accordingly. The impugned judgments of the High Court stand modified to that extent. The writ petition mentioned above is dismissed. There shall be no order as to costs.