

JARNAIL SINGH v. LACHHMI NARAIN GUPTA

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(BEFORE L. NAGESWARA RAO, SANJIV KHANNA AND B.R. GAVAI, JJ.)

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a JARNAIL SINGH AND OTHERS . . Appellants;

Versus

LACHHMI NARAIN GUPTA AND OTHERS . . Respondents.

b Civil Appeals No. 629 of 2022^{*1} with Nos. 1004 of 2020, 630, 642, 643-644, 645 of 2022^{*2}, 631, 638 of 2022^{*3}, 632, 635 of 2022^{*4}, 636, 637 of 2022^{*5}, 633 of 2022^{*6}, 753-55, 662 of 2022^{*7}, 759 of 2022^{*8}, 646 of 2022^{*9}, 703-704 of 2022^{*10}, 735 of 2022^{*11}, 713 of 2022^{*12}, 647, 648 of 2022^{*13}, 4876-882 of 2017^{*14}, 11816, 11817, 11820 of 2016, 5247, 11822-825, 11828-832, 11837-840, 11842-845, 11847-850 of

c ^{*1} Arising out of SLP (C) No. 30621 of 2011. Arising from the Judgment and Order in *Lachhmi Narain Gupta v. Jarnail Singh*, 2011 SCC OnLine P&H 8144 (Punjab & Haryana High Court, CWP No. 13218 of 2009, dt. 15-7-2011)

^{*2} Arising out of SLPs (C) Nos. 31735 of 2011, 23344, 23339-23340, 33163 of 2014. Arising from the Judgment and Order in *Union of India v. Jarnail Singh*, 2011 SCC OnLine P&H 13175 (Punjab & Haryana High Court, CWP No. 6497 of 2009, dt. 23-9-2011)

^{*3} Arising out of SLPs (C) Nos. 35000 of 2011 and 6915 of 2014

d ^{*4} Arising out of SLPs (C) Nos. 2839 and 5860 of 2012. Arising from the Judgment and Order in *Rajeev Kesarwani v. All India Income Tax SC/ST Employees Welfare Federation*, 2011 SCC OnLine Bom 2135 (Bombay High Court, CWP No. 9752 of 2011, dt. 16-11-2011)

^{*5} Arising out of SLPs (C) Nos. 5859, 30841 of 2012. Arising from the Judgment and Order in *Union of India v. All India Income Tax SC/ST Employees Welfare Federation*, 2011 SCC OnLine Bom 2136 (Bombay High Court, CWP No. 8986 of 2011, dt. 8-11-2011)

^{*6} Arising out of SLP (C) No. 4831 of 2012. Arising from the Judgment and Order in *Ashok Kumar Sharma v. Union of India* (Rajasthan High Court, SAW No. 1251 of 2011, dt. 12-9-2011)

e ^{*7} Arising out of SLPs (C) Nos. 1332, 1336 and 1338 of 2022, 31288 of 2017. Arising from the Judgment and Order in *All India Equality Forum v. Union of India*, 2017 SCC OnLine Del 10081 [Delhi High Court, WP (C) No. 3490 of 2010, dt. 23-8-2017]

^{*8} Arising out of SLP (C) No. 1347 of 2022 (Diary No. 30694 of 2018). Arising from the Judgment and Order in *Union of India v. Vinod Sharma*, 2018 SCC OnLine MP 1830 (Madhya Pradesh High Court, Indore Bench, MP No. 1479 of 2017, dt. 2-1-2018)

f ^{*9} Arising out of SLP (C) No. 21343 of 2015. Arising from the Judgment and Order in *Union of India v. Gian Singh Verma*, 2014 SCC OnLine HP 4191 (Himachal Pradesh High Court, CWP No. 6160 of 2014, dt. 1-9-2014)

^{*10} Arising out of SLPs (C) Nos. 14549-550 of 2019. Arising from the Judgments and Orders in *Union of India v. Inder Kumar*, 2018 SCC OnLine P&H 6993 (Punjab & Haryana High Court, CWP No. 17376 of 2018, dt. 6-12-2018) and *Union of India v. Inder Kumar*, 2018 SCC OnLine P&H 6992 (Punjab & Haryana High Court, CWP No. 17376 of 2018, dt. 18-12-2018)

^{*11} Arising out of SLP (C) No. 845 of 2020. Arising from the Judgment and Order in *Union of India v. B. Ravikant*, 2018 SCC OnLine Chh 821 (Chhattisgarh High Court, WPS No. 4346 of 2018, dt. 23-10-2018)

g ^{*12} Arising out of SLP (C) No. 25756 of 2019. Arising from the Judgment and Order in *Union of India v. Santosh Kumar Mandal*, 2018 SCC OnLine Chh 1002 (Chhattisgarh High Court, WPS No. 5153 of 2018, dt. 23-10-2018)

^{*13} Arising out of SLPs (C) Nos. 25191, 31191 of 2015. Arising from the Judgment and Order in *Shyodan Singh v. State of U.P.*, 2015 SCC OnLine All 8540 (Allahabad High Court, Writ A. No. 19466 of 2015, dt. 13-8-2015)

h ^{*14} Arising from the Judgment and Order in *State of Bihar v. Sushil Kumar Singh*, 2015 SCC OnLine Pat 6002 (Patna High Court, Letters Patent Appeal No. 1066 of 2015 in CWJC No. 19114 of 2012, dt. 30-7-2015)

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2016, 701-704 of 2017^{*15}, 650-51 of 2022^{*16}, 4833 of 2017^{*16}, 734 of 2022^{*17}, 724-27 of 2022^{*18}, 736 of 2022^{*19}, 4562-564 of 2017^{*20}, 652 of 2022^{*21}, 764 of 2022^{*22}, 656 of 2022^{*23}, 654-55 of 2022^{*24}, 649 of 2022^{*25}, 653 of 2022^{*26}, 657 of 2022^{*27}, 663 of 2022^{*28}, ... of 2022^{*28a}, 658-61, 670-74, 677-79, 756, 765-75, 776 of 2022^{*29},

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*15 Arising from the Judgment and Order in *Manish Tripathi v. State of M.P.* (Madhya Pradesh High Court, WP No. 8976 of 2012, dt. 30-4-2016) sub nom *R.B. Rai v. State of M.P.* (Madhya Pradesh High Court, Writ Petition No. 1942 of 2011, dt. 30-4-2016), 2016 SCC OnLine MP 747

*16 Arising out of SLPs (C) Nos. 31425, 31240 of 2016. Arising from the Judgment and Order in *Post Graduate Institute of Medical Education & Research v. CAT*, 2016 SCC OnLine P&H 38 (Punjab & Haryana High Court, CWP No. 10681 of 2013, dt. 13-1-2016)

*17 Arising out of SLP (C) No. 626 of 2020. Arising from the Judgment and Order in *Union of India v. G.D. Choudhury*, 2018 SCC OnLine Chh 822 (Chhattisgarh High Court, WPS No. 4395 of 2018, dt. 23-10-2018)

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*18 Arising out of SLPs (C) Nos. 28164-167 of 2019. Arising from the Judgment and Order in *S. Nageweswa Rao v. Union of India*, 2019 SCC OnLine CAT 270 (Central Administrative Tribunal, OA No. 1507 of 2015, dt. 22-3-2019)

*19 Arising out of SLP (C) No. 851 of 2020. Arising from the Judgment and Order in *Ministry of Railways v. R.N. Maurya*, 2019 SCC OnLine Chh 374 (Chhattisgarh High Court, WPS No. 4467 of 2018, dt. 20-2-2019)

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*20 Arising from the Judgment and Order in *Jayanta Chakraborty v. State of Tripura*, 2015 SCC OnLine Tri 383 [Tripura High Court, WP (C) No. 189 of 2011, dt. 9-4-2015]

*21 Arising out of SLP (C) No. 10638 of 2017. Arising from the Judgment and Order in *Union of India v. A.K. Tiwari*, 2015 SCC OnLine Del 11544 [Delhi High Court, WP (C) No. 8176 of 2015, dt. 26-8-2015]

*22 Arising out of SLP (C) No. 1354 of 2022 (CC No. 6821 of 2017). Arising from the Judgment and Order in *Union of India v. Dayal Bist*, 2016 SCC OnLine MP 12231 (Madhya Pradesh High Court, WP No. 1919 of 2016, dt. 22-6-2016)

e

*23 Arising out of SLP (C) No. 18844 of 2017. Arising from the Judgment and Order in *Ram Krishan Singh v. Union of India*, 2017 SCC OnLine P&H 5477 (Punjab & Haryana High Court, CWP No. 15782 of 2015, dt. 18-1-2017)

*24 Arising out of SLPs (C) Nos. 19422-423 of 2017. Arising from the Judgment and Order in *All India SC/ST Railway Employees Assn. v. All India Equality Forum* (Punjab and Haryana High Court, CWP No. 19121 of 2015, dt. 18-1-2017) sub nom *Ram Krishan Singh v. Union of India*, 2017 SCC OnLine P&H 5477 (Punjab & Haryana High Court, CWP No. 15782 of 2015, dt. 18-1-2017) and *All India SC/ST Railway Employees Assn. v. All India Equality Forum*, 2017 SCC OnLine P&H 5482 (Punjab & Haryana High Court, RA No. 193 of 2017 in CWP No. 19121 of 2015, dt. 5-4-2017)

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*25 Arising out of SLP (C) No. 33688 of 2015. Arising from the Judgment and Order in *Union of India v. Ram Naresh*, 2015 SCC OnLine All 9685 (Allahabad High Court, Writ-A No. 30545 of 2015, dt. 22-5-2015)

*26 Arising out of SLP (C) No. 17491 of 2017. Arising from the Judgment and Order in *Union of India v. Sanjeev Malhotra*, 2017 SCC OnLine P&H 5478 (Punjab & Haryana High Court, CWP No. 25871 of 2016, dt. 6-2-2017)

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*27 Arising out of SLP (C) No. 24681 of 2017. Arising from the Judgment and Order in *Union of India v. Shaneel Rana*, 2017 SCC OnLine P&H 5480 (Punjab & Haryana High Court, CWP No. 24671 of 2016, dt. 17-1-2017)

*28 Arising out of SLP (C) No. 32944 of 2017. Arising from the Judgment and Order in *Union of India v. CAT*, 2016 SCC OnLine P&H 19414 (Punjab & Haryana High Court, CWP No. 26058 of 2015, dt. 28-3-2016)

*28a Arising out of Diary No. 38895 of 2017

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*29 Arising from the Judgment and Order in *State of Maharashtra v. Vijay Ghogre*, 2017 SCC OnLine Bom 7398 (Bombay High Court, Writ Petition No. 2797 of 2015, dt. 4-8-2017)

a 664, 752 of 2022^{*30}, 683-702 of 2022^{*31}, 761-63 of 2022^{*32},
777-80 of 2022^{*33}, 681-82 of 2022^{*34}, 707-708 of 2022^{*35}, 782 of
2022^{*36}, 757 of 2022^{*37}, 522-627, 634, 680, 715-723 of 2022^{*38},
666 of 2022^{*39}, 668-69, 750-51 of 2022^{*40}, 667 of 2022^{*41}, 747-49
of 2022^{*42}, 758 of 2022^{*43}, 516 of 2022^{*44}, 705 of 2022^{*45},

- b* *30 Arising from the Judgment and Order in *PGIMER v. CAT*, 2017 SCC OnLine P&H 5479 (Punjab & Haryana High Court, CWP No. 10681 of 2013, dt. 19-5-2017)
- b* *31 Arising out of SLPs (C) Nos. 13993-14004, 14105-14112 of 2019. Arising from the Judgment and Order in *State of Maharashtra v. Vijay Ghogre*, 2017 SCC OnLine Bom 7398 (Bombay High Court, Writ Petition No. 2797 of 2015, dt. 4-8-2017); *State of Maharashtra v. Vijay Ghogre*, 2017 SCC OnLine Bom 6756 (Bombay High Court, Writ Petition No. 2797 of 2015, dt. 25-7-2017); *State of Maharashtra v. Vijay Ghogre*, 2016 SCC OnLine Bom 5177 (Bombay High Court, Writ Petition No. 2797 of 2015, dt. 26-7-2016) and *State of Maharashtra v. Vijay Ghogre*, 2016 SCC OnLine Bom 16133 (Bombay High Court, Writ Petition No. 2797 of 2015, dt. 21-12-2016)
- c* *32 Arising out of SLPs (C) Nos. 1351-353 of 2022 (Diary No. 34271 of 2017)
- c* *33 Arising out of SLPs (C) Nos. 1370-373 of 2022 (Diary No. 34520 of 2017)
- c* *34 Arising out of SLPs (C) Nos. 13974-975 of 2019
- c* *35 Arising out of SLPs (C) Nos. 21309-310 of 2019. Arising from the Judgment and Order in *Pramod Kumar Shukla v. Union of India*, 2018 SCC OnLine Del 13425 [Delhi High Court, WP (C) No. 3107 of 2017, dt. 22-11-2018]
- d* *36 Arising out of SLP (C) No. 1376 of 2022 (Diary No. 28194 of 2019). Arising from the Judgment and Order in *Union of India v. Bhaskar Guha*, 2018 SCC OnLine Chh 820 (Chhattisgarh High Court, WPS No. 714 of 2018, dt. 15-11-2018)
- d* *37 Arising out of SLP (C) No. 1345 of 2022 (Diary No. 34750 of 2018). Arising from the Judgment and Order in *Railway Board v. Nagendra Kumar*, 2018 SCC OnLine MP 1836 [Madhya Pradesh High Court, Indore Bench, Misc. Petition (MP) No. 1480 of 2017, dt. 5-1-2018]
- d* *38 Arising out of SLPs (C) Nos. 20777, 22246, 27951-959 of 2019, 110-215 of 2020. Arising from the Judgment and Order in *Sunkara Radhakrishna v. Union of India*, 2019 SCC OnLine CAT 27077 (Central Administrative Tribunal, OA No. 20/1162 of 2013, dt. 11-1-2019)
- e* *39 Arising out of SLP (C) No. 18925 of 2018. Arising from the Judgment and Order in *Aman Kumar v. State of Punjab*, 2018 SCC OnLine P&H 6990 (Punjab & Haryana High Court, CWP No. 16039 of 2014, dt. 20-2-2018)
- e* *40 Arising out of SLPs (C) Nos. 27401-402 of 2018, 1199-1200 of 2022 (Diary No. 22349 of 2018). Arising from the Judgment and Order in *Ram Krishan Singh v. Union of India*, 2017 SCC OnLine P&H 5477 (Punjab & Haryana High Court, CWP No. 15782 of 2015, dt. 18-1-2017); *Union of India v. Vishesh Kumar*, 2017 SCC OnLine P&H 5476 (Punjab & Haryana High Court, RA CW No. 189 of 2017 in CWP No. 16862 of 2015, dt. 3-4-2017)
- f* *41 Arising out of SLP (C) No. 22985 of 2018. Arising from the Judgment and Order in *Union of India v. Manohar Singh*, 2017 SCC OnLine Raj 2648 (Rajasthan High Court, DB Civil Writ Petition No. 8448 of 2017, dt. 3-10-2017)
- f* *42 Arising out of SLPs (C) Nos. 1196-198 of 2022 (Diary No. 23907 of 2018). Arising from the Judgment and Order in *Union of India v. All India Equality Forum* (Punjab & Haryana High Court, CWP No. 19037 of 2015, dt. 18-1-2017) sub nom *Ram Krishan Singh v. Union of India*, 2017 SCC OnLine P&H 5477 (Punjab & Haryana High Court, CWP No. 15782 of 2015, dt. 18-1-2017); *Union of India v. All India Equality Forum*, 2017 SCC OnLine P&H 5481 (Punjab & Haryana High Court, RA CW No. 178 of 2017, dt. 29-3-2017)
- g* *43 Arising out of SLP (C) No. 1346 of 2022. (Diary No. 30693 of 2018). Arising from the Judgment and Order in *Union of India v. Santosh Kumar Mishra*, 2018 SCC OnLine MP 1835 (Madhya Pradesh High Court, MP No. 1482 of 2017, dt. 2-1-2018)
- g* *44 Arising out of SLP (C) No. 1201 of 2022 (Diary No. 24594 of 2018). Arising from the Judgment and Order in *Union of India v. Nar Singh Thakur*, 2017 SCC OnLine Pat 3731 (Patna High Court, CWJC No. 4345 of 2017, dt. 24-7-2017)
- h* *45 Arising out of SLP (C) No. 14611 of 2019. Arising from the Judgment and Order in *Union of India v. Dilip Kumar Chouhan*, 2018 SCC OnLine MP 1837 (Madhya Pradesh High Court, MP No. 1481 of 2017, dt. 2-1-2018)

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711 and 731 of 2022^{*50}, 714 of 2022^{*51}, 730 of 2022^{*52}, 729 of 2022^{*53},
732 of 2022^{*54}, 728 of 2022^{*55}, 1078 of 2022^{*56}, 2434 of 2019^{*57}, 738-39
of 2022^{*58}, 709-710 of 2022^{*59}, 733, 737 of 2022^{*60}, 741 of 2022^{*61},

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^{*46} Arising out of SLP (C) No. 1348 of 2022 (Diary No. 39571 of 2018). Arising from the Judgment and Order in *Union of India v. Vinod Sharma*, 2018 SCC OnLine MP 1838 (Madhya Pradesh High Court, MP No. 1483 of 2017, dt. 3-1-2018)

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^{*47} Arising out of SLPs (C) Nos. 5724-725 of 2019. Arising from the Judgment and Order in *Union of India v. Raj Kumar*, 2018 SCC OnLine Del 13426 [Delhi High Court, WP (C) No. 12035 of 2018, dt. 12-11-2018]

^{*48} Arising out of SLPs (C) Nos. 10551-553 of 2019. Arising from the Judgment and Order in *Arbind Kumar v. State of Bihar*, 2019 SCC OnLine Pat 3360 (Patna High Court, Miscellaneous Jurisdiction Case No. 2847 of 2018, dt. 1-4-2019)

^{*49} Arising out of SLP (C) No. 18314 of 2019. Arising from the Judgment and Order in *Union of India v. Kaushik Mukhopadhyay*, 2019 SCC OnLine Chh 376 (Chhattisgarh High Court, Writ Petition No. 1720 of 2019, dt. 13-3-2019)

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^{*50} Arising out of SLPs (C) Nos. 21364, 29234 of 2019. Arising from the Judgment and Order in *Union of India v. Ranjan Kumar Pradhan* [Orissa High Court, WP (C) No. 22093 of 2018, dt. 18-4-2019]

^{*51} Arising out of SLP (C) No. 26891 of 2019. Arising from the Judgment and Order in *Union of India v. Vijay Bahadur Mishra*, 2018 SCC OnLine Chh 826 (Chhattisgarh High Court, WPS No. 5113 of 2018, dt. 23-10-2018)

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^{*52} Arising out of SLP (C) No. 29159 of 2019. Arising from the Judgment and Order in *Union of India v. J. Murali Krishna Das*, 2018 SCC OnLine Chh 823 (Chhattisgarh High Court, WPS No. 4834 of 2018, dt. 23-10-2018)

^{*53} Arising out of SLP (C) No. 29152 of 2019. Arising from the Judgment and Order in *Union of India v. Sudarshan Dhari*, 2018 SCC OnLine Chh 824 (Chhattisgarh High Court, WPS No. 5089 of 2018, dt. 23-10-2018)

^{*54} Arising out of SLP (C) No. 571 of 2020. Arising from the Judgment and Order in *Union of India v. Jitendra Kumar*, 2019 SCC OnLine Chh 375 (Chhattisgarh High Court, WPS No. 5115 of 2018, dt. 8-3-2019)

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^{*55} Arising out of SLP (C) No. 29150 of 2019. Arising from the Judgment and Order in *Union of India v. Ajit Kumar Singh*, 2018 SCC OnLine Chh 825 (Chhattisgarh High Court, WPS No. 5107 of 2018, dt. 23-10-2018)

^{*56} Arising out of SLP (C) No. 920 of 2020. Arising from the Judgment and Order in *Union of India v. Sk. Zainuddin*, 2018 SCC OnLine Hyd 2012 (Hyderabad High Court, WP No. 9456 of 2018, dt. 29-11-2018)

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^{*57} Arising from the Judgment and Order in *Bhupinder Singh Hira v. Prem Chand Guleria*, 2016 SCC OnLine P&H 15542 (Punjab & Haryana High Court, CWP No. 13357 of 2016, dt. 14-9-2016)

^{*58} Arising out of SLPs (C) Nos. 2395-396 of 2020. Arising from the Judgment and Order in *P.S. Sastry v. Union of India*, 2018 SCC OnLine CAT 28639 (Central Administrative Tribunal, OA No. 1287 of 2018, dt. 28-3-2018) and *Union of India v. P.S. Sastry*, 2019 SCC OnLine CAT 27071 (Central Administrative Tribunal, RA No. 227 of 2018 in OA No. 1287 of 2018, dt. 16-8-2019)

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^{*59} Arising out of SLP (C) No. 1326-327 of 2022. (Diary No. 43894 of 2019). Arising from the Judgment and Order in *A. Nambirajan v. Railway Protection Force*, 2019 SCC OnLine Mad 38981 (Madras High Court, WP No. 4267 of 2017, dt. 11-3-2019)

^{*60} Arising out of SLPs (C) Nos. 609, 887 of 2020. Arising from the Judgment and Order in *Postgraduate Institute of Medical Education & Research v. Darshan Kaur Cheema*, 2019 SCC OnLine P&H 6254 (Punjab & Haryana High Court, Civil Writ Petition No. 19442 of 2018, dt. 27-9-2019)

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^{*61} Arising out of SLP (C) No. 7332 of 2020. Arising from the Judgment and Order in *Union of India v. Alok Kumar* (Chhattisgarh High Court, WPS No. 1061 of 2018, dt. 15-11-2018)

a 740 of 2022^{*62}, 742-44 of 2022^{*63}, 628 of 2022^{*64}, 745 of 2022^{*65}, 746 of 2022^{*66}, Contempt Petitions (C) Nos. 11 & 13 of 2017^{*67} in Civil Appeals Nos. 4562-564 of 2017^{*20}, Contempt Petition (C) No. 314 of 2016 in SLP (C) No. 4831 of 2012^{*68}, TPs (C) Nos. 608-609 of 2017, Contempt Petition (C) No. 985 of 2018^{*69} in Civil Appeal No. 5247 of 2016^{*70}, Contempt Petition (C) No. 1067 of 2019 in SLP (C) No. 30621 of 2011^{*71}, Contempt Petitions (C) Nos. 200-201 of 2021 in SLPs (C) Nos. 5724-25 of 2019^{*72}, Contempt Petitions (C) Nos. 211-212 of 2021 in Civil Appeal No. 5247 of 2016^{*70}, Contempt Petitions (C) Nos. 378-79 of 2021 in Civil Appeals Nos. 11837-840 of 2016, Writ Petitions (C) Nos. 1371 of 2019^{*73} and 882 of 2021, decided on January 28, 2022

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^{*62} Arising out of SLP (C) No. 6834 of 2020. Arising from the Judgment and Order in *Union of India v. Pawan Kumar Sinha*, 2019 SCC OnLine Chh 390 (Chhattisgarh High Court, WPS No. 5097 of 2018, order dated 16-4-2019)

^{*63} Arising out of SLP (C) No. 8066, 8588 and 15749 of 2020. Arising from the Judgment and Order in *Union of India v. CAT*, 2020 SCC OnLine P&H 4414 (Punjab & Haryana High Court, CWP No. 9876 of 2016, dt. 12-2-2020)

e ^{*64} Arising out of SLP (C) No. 15148 of 2020. Arising from the Judgment and Order in *Prakash Vir v. BSNL*, 2020 SCC OnLine CAT 17272 (Central Administrative Tribunal, OA No. 60/332 of 2017, dt. 25-2-2020)

^{*65} Arising out of SLP (C) No. 639 of 2021. Arising from the Judgment and Order in *Ramesh Kumar v. BSNL*, 2020 SCC OnLine CAT 17273 (Central Administrative Tribunal, OA No. 60/750 of 2018, dt. 25-2-2020)

f ^{*66} Arising out of SLP (C) No. 3684 of 2021. Arising from the Judgment and Order in *M. Laxminarayana v. South Central Railway*, 2019 SCC OnLine CAT 21673 (Central Administrative Tribunal, OA No. 20/283 of 2014, dt. 24-12-2019)

^{*67} Arising from the Judgment and Order in *State of Tripura v. Jayanta Chakraborty*, 2015 SCC OnLine SC 1904 [Supreme Court, SLPs (C) Nos. 19765-767 of 2015, dt. 27-7-2015]

^{*20} Arising from the Judgment and Order in *Jayanta Chakraborty v. State of Tripura*, 2015 SCC OnLine Tri 383 [Tripura High Court, WP (C) No. 189 of 2011, dt. 9-4-2015]

^{*68} Arising from the Judgment and Order in *State of Tripura v. Jayanta Chakraborty*, (2018) 1 SCC 146 (Supreme Court, Civil Appeals Nos. 4562-64 of 2017, dt. 14-11-2017)

g ^{*69} Arising from the Judgment and Order in *Ashok Kumar Sharma v. Union of India* (Rajasthan High Court, Jaipur Bench, SAW No. 1251 of 2011, dt. 12-9-2011)

^{*70} Arising from the Judgment and Order in *R.B. Rai v. State of M.P.*, 2016 SCC OnLine MP 747 [Madhya Pradesh High Court, Writ Petition No. 1942 of 2011, dt. 30-4-2016]

^{*71} Arising from the Judgment and Order in *Lachhmi Narain Gupta v. Jarnail Singh*, 2011 SCC OnLine P&H 8144 (Punjab & Haryana High Court, CWP No. 13218 of 2009, dt. 15-7-2011)

h ^{*72} Arising from the Judgment and Order in *Union of India v. Raj Kumar*, 2018 SCC OnLine Del 13426 [Delhi High Court, WP (C) No. 12035 of 2018, dt. 12-11-2018]

^{*73} Under Article 32 of the Constitution of India

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A. Constitution of India — Arts. 16(4), (4-A) and (4-B) and Art. 335 — Reservation policy for SCs and STs — Identification of quantifiable data showing inadequacy of representation of SCs and STs in public employment — Discretion of executive to identify measure and quantify these yardsticks under the enabling Arts. 16(4) and (4-A) and to lay down a valid, proper and just reservation policy — Scope of — Limitations of judicial review — Law clarified

— Held, Court cannot lay down such yardsticks or issue directions or advisory sermons to the executive in respect of sphere which is exclusively within their domain under the Constitution — Laying down criteria for determining the inadequacy of representation would result in curtailing the discretion given to the Central Government and State Governments — Supreme Court should leave “the decision-making to the other branches of Government after directing their attention to the problems rather than itself entering into the remedial field”

— The rationale why the enabling Arts. 16(4) and (4-A) give such discretion to the executive is as follows — There are no fixed rules to identify, measure or quantify the numerous factors like backwardness of class, inadequacy of representation, equality, justice or efficiency of administration, etc. — Each of these competing claims seeks to achieve certain goals — How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment — It depends upon facts and circumstances of each case — Hence, the Court refused to lay down any criteria for determining the adequacy of representation, as the States were at liberty to determine the factors relevant for deciding adequate representation — Reservation, Concession, Exemption, Relaxation and Affirmative Action — Reservation Policy/Adequacy of Reservation/Quantifiable data (Paras 12 to 17)

B. Constitution of India — Arts. 16(4), (4-A) and (4-B) and Art. 335 — Reservation policy — Reservation policy for SCs and STs — Collection and application of quantifiable data showing inadequacy of representation of SCs and STs in public employment — Basic unit from which such data should be collected and applied, clarified

— Collection of quantifiable data regarding inadequacy of representation of SCs and STs, held, cannot be with reference to the entire service or “class”/“group” but it should be relatable to the cadre/grade/category of posts concerned

— Cadre, which should be the unit for the purpose of collection of quantifiable data in relation to the promotional post(s), would be meaningless if data pertaining to representation of SCs and STs is with reference to the entire service — The entire service cannot be considered to be a cadre for the purpose of promotion from one post to a higher post in a different grade — Promotion is made from one grade to the next higher grade, in relation to which cadres are constituted — As per Office Memorandum dt. 2-7-1997, a cadre is to be construed as the number of posts in a particular grade — The percentage of reservation in promotions has to be applied to the entire cadre strength

a — Thus, held, conclusion in *B.K. Pavitra (2)*, (2019) 16 SCC 129 approving the collection of data on the basis of “groups” and not cadres is contrary to the law laid down in *M. Nagaraj case* and *Jarnail Singh*, (2018) 10 SCC 396 (Paras 18 to 38 and 64 to 69)

b **C. Constitution of India — Arts. 16(4), (4-A) and (4-B) and Art. 335 — Reservation policy — Reservation policy for SCs and STs — Test for determining adequacy of representation — Whether proportion of the population of SCs and STs to the population of India should be taken to be the test for such determination**

c — Held, there is no need to express any opinion on this aspect — The exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment — As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter-balanced will depend on the facts and circumstances of each case — It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors (Paras 40 and 41)

d **D. Constitution of India — Arts. 16(4), (4-A) and (4-B) and Art. 335 — Reservation policy — Reservation policy for SCs and STs — Discontinuation of reservation in totality — Limitations of judicial review — Held, the Court is not inclined to express any view on discontinuation of reservations in totality, which is completely within the domain of the legislature and the executive** (Paras 42 and 43)

e **E. Constitution of India — Arts. 16(4), (4-A) and (4-B) and Art. 335 — Reservation policy — Reservation policy for SCs and STs — Periodical review of data collected to determine inadequacy of representation for the purpose of providing reservation — Limitations of judicial review — Held, the period for review should be reasonable and is left to the Government to determine** (Paras 42 and 43)

f **F. Constitution of India — Arts. 16(4), (4-A) & (4-B), Art. 335 and Art. 142 — Law laid down in *M. Nagaraj*, (2006) 8 SCC 212 [except to the extent held to be per incuriam in *Jarnail Singh*, (2018) 10 SCC 396], held, shall operate prospectively from its date of decision**

g — Held, in exercise of power to do complete justice under Art. 142, said valid ruling in *M. Nagaraj* that identification of quantifiable data showing inadequacy of representation of SCs and STs in public employment is a necessary pre-condition for grant of reservation in promotion for SCs and STs, is to be applied prospectively even though *M. Nagaraj* itself did not declare that it would have prospective operation

h — Held, the rationale why *M. Nagaraj case* would have prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in *M. Nagaraj case* —

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Most of them would have already retired from service on attaining the age of superannuation — The judgment of *M. Nagaraj case* was delivered in 2006, interpreting Art. 16(4-A) of the Constitution which came into force in 1995 — As making the principles laid down in *M. Nagaraj case* effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time, it is necessary that the judgment of *M. Nagaraj case* should be declared to have prospective effect from its date of decision (Paras 46 to 61)

G. Constitution of India — Arts. 16(4), (4-A) and (4-B) and Art. 335 — Reservation policy — Reservation policy for SCs and STs — Collection of quantifiable data showing inadequacy of representation of SCs and STs in public employment — Sampling method of collecting quantifiable data — Whether valid

— Held, sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data — However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a “group”, is the unit and the data has to be collected with respect to each cadre — Therefore, the conclusion of the Court in *B.K. Pavitra (2)*, (2019) 16 SCC 129 approving the collection of data on the basis of “groups” and not cadres is contrary to the law laid down in *M. Nagaraj case* and *Jarnail Singh*, (2018) 10 SCC 396 (Paras 64 to 69)

H. Constitution of India — Arts. 141 and 142 — Prospective application of decision or prospective overruling of earlier position of law — Availability of power — Held, there cannot be any manner of doubt that the Supreme Court can apply its decision prospectively or prospectively overrule earlier position of law i.e. from the date of its judgment to save past transactions

I. Constitution of India — Arts. 141 and 142 — Prior judgment of Supreme Court, held, can be made prospectively applicable subsequently by a different, even smaller Bench of Supreme Court, in exercise of the power to complete justice under Art. 142 — It is not the law that prospective overruling or prospective operation can be directed only by the Court/Bench which has rendered the decision in question — Hence, in exercise of power under Art. 142 to do complete justice, present three-Judge Bench declared five-Judge Constitution Bench in *M. Nagaraj* to have prospective operation — See also Shortnote F

J. Constitution of India — Art. 141 — Obiter dictum — What is — Ratio decidendi alone is binding — Reiterated

— A decision on a point not necessary for the purpose of or which does not fall for determination in that decision becomes an obiter dictum — It is well-settled that only the ratio decidendi can act as the binding or authoritative precedent — Reliance placed on mere general observations or casual expressions of the Court, is not of much avail

The following issues arose for consideration before the Supreme Court:

- a (1) What is the yardstick by which, according to *M. Nagaraj*, (2006) 8 SCC 212, one would arrive at quantifiable data showing the inadequacy of representation of SCs and STs in public employment?
- (2) What is the unit with respect to which quantifiable data showing the inadequacy of representation is required to be collected?
- (3) Whether the proportion of the population of SCs and STs to the population of India should be taken to be the test for determining the adequacy of representation in promotional posts for the purposes of Article 16(4-A)?
- b (4) Should there be a time period for reviewing the inadequacy of representation?
- (5) Whether the judgment in *M. Nagaraj case* can be said to operate prospectively?
- c (6) Whether quantifiable data showing the inadequacy of representation can be collected on the basis of sampling methods, as held by the Court in *B.K. Pavitra case* [*"B.K. Pavitra (2) case"*]?

Without expressing any opinion on the merits of individual appeals, the Supreme Court

Held :

d *The yardstick for arriving at quantifiable data*

Articles 16(4) and 16(4-A) are enabling provisions. The discretion of the State to provide reservation is subject to the existence of backwardness and inadequacy of representation in public employment. Backwardness has to be based on objective factors whereas inadequacy has to factually exist. There is no fixed yardstick to identify equality, justice and efficiency which are variable factors and it depends on the facts and circumstances of each case. The concepts of efficiency, backwardness, and inadequacy of representation are required to be identified and measured on the basis of data. In case of a challenge made to reservations provided by the State Government, it is incumbent on the State Government to satisfy the Court that the decision is supported by quantifiable data showing the backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution. (Para 12)

f *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013, *relied on*

The exercise of identifying and measuring concepts of efficiency, backwardness and inadequacy of representation on the basis of data depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. (Para 13)

g *U.P. Power Corpn. Ltd. v. Rajesh Kumar*, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289, *affirmed*

The Court refused to lay down any criteria for determining the adequacy of representation, as the States were given the liberty to determine the factors relevant for deciding adequate representation, depending upon the promotional posts in question. (Para 14)

h *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86, *considered*

M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013, *referred to*

It is neither legal nor proper for the Courts to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within their domain under the Constitution. (Para 15)

Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364 : 1 SCEC 358, *relied on*

Mallikarjuna Rao v. State of A.P., (1990) 2 SCC 707 : 1990 SCC (L&S) 387, *affirmed*

The Supreme Court should leave “the decision-making to the other branches of Government after directing their attention to the problems rather than itself entering into the remedial field”. (Para 16)

P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 : 2002 SCC (Cri) 830, *relied on*

Determination of inadequate representation of SCs and STs in services under a State is left to the discretion of the State, as the determination depends upon myriad factors which cannot be envisaged herein. A conscious decision was taken by the Supreme Court to leave it to the States to fix the criteria for determining inadequacy of representation. The submission that the Supreme Court has to lay down the yardstick for measuring the adequacy of representation did not yield a favourable result as it is befitting for the States to have the liberty to evaluate the representation of SCs and STs in public employment. Laying down criteria for determining the inadequacy of representation would result in curtailing the discretion given to the State Governments. In addition, the prevailing local conditions, which may require to be factored in, might not be uniform. Moreover, the validity of law made by the State Governments providing reservation in promotions shall be decided on a case-to-case basis for the purpose of establishing whether the inadequacy of representation is supported by quantifiable data. Therefore, no yardstick can be laid down by the Supreme Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation. (Para 17)

M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013; *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86, *followed*

Unit for collecting quantifiable data

The civil posts under the Government are organised into different services. A service constitutes “classes”/“groups” of posts. A “class”/“group” is further bifurcated into grades. Though the nomenclature might be different, the structure of services under the Union and the States is similar. According to the instructions issued by the Union of India, cadres are constituted for each grade. The Union of India submitted that there are 3800 cadres in 44 Ministries/Departments. Fundamental Rule 9(4) defines “cadre” to mean the strength of a service or part of a service sanctioned as a separate unit. It is the choice of a State to constitute cadres. The entire service cannot be considered to be a cadre for the purpose of promotion from one post to a higher post in a different grade. Promotion is made from one grade to the next higher grade, in relation to which cadres are constituted. The post of Director and Deputy Director cannot form one cadre. A cadre is constituted by the Government by taking into account several factors within its sole discretion. (Paras 18 to 37)

A.K. Subraman v. Union of India, (1975) 1 SCC 319 : 1975 SCC (L&S) 36; *Sub-Inspector Rooplal v. Lt. Governor*, (2000) 1 SCC 644 : 2000 SCC (L&S) 213, *relied on*

Chakradhar Paswan v. State of Bihar, (1988) 2 SCC 214 : 1988 SCC (L&S) 516; *Union of India v. P.K. Choudhary*, (2016) 4 SCC 236 : (2016) 1 SCC (L&S) 640, *affirmed*

Union of India v. Pushpa Rani, (2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851, *impliedly distinguished*

In the Office Memorandum dated 2-7-1997, the Union of India set out the principles for making and operating post-based rosters, in which it has been

a expressly stated that cadre is to be construed as the number of posts in a particular grade. It is made clear that rosters have been prepared grade-wise which are reviewed on a yearly basis and that reservation in promotions is implemented on the basis of these rosters, which operate grade-wise. The percentage of reservation in promotions has to be applied to the entire cadre strength. The unit for the operation of the roster would be the cadre strength. (Para 38)

b Before providing for reservation in promotions to a cadre, the State is obligated to collect quantifiable data regarding the inadequacy of representation of SCs and STs. The collection of information regarding the inadequacy of representation of SCs and STs cannot be with reference to the entire service or “class”/“group” but it should be relatable to the grade/category of posts to which promotion is sought. Cadre, which should be the unit for the purpose of collection of quantifiable data in relation to the promotional post(s), would be meaningless if data pertaining to the representation of SCs and STs is with reference to the entire service. (Para 38)

M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013; *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548, *relied on*

c ***Prospective operation of the judgment in M. Nagaraj case***

The law declared by the Supreme Court interpreting Article 16(4-A) in *M. Nagaraj case*, as it currently stands, applies from 17-6-1995 i.e. the date on which Article 16(4-A) came into force. (Para 47)

Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641; *Lily Thomas v. Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056, *relied on*

d *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013; *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86, *referred to*

Regarding the scope of Article 142 of the Constitution, the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions. (Para 48)

Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643; *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1, *relied on*

e The power of the Supreme Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition. Relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case. (Para 49)

f There cannot be any manner of doubt that the Supreme Court can apply its decision prospectively i.e. from the date of its judgment to save past transactions. (Para 49)

Prospective overruling can not only be on an earlier judicial decision on the same issue which was otherwise final, the Court also has the power even when deciding on an issue for the first time. There is no prohibition for the Court to postpone the operation of an earlier judgment or to prospectively overrule it. (Paras 49 to 56)

g It is no doubt true that *M. Nagaraj case* did not state that it would be prospective in operation. It has been held in judgments of the Supreme Court that a prior judgment of the Supreme Court can be made prospectively applicable subsequently by a different Bench of Supreme Court in exercise of the power to complete justice under Article 142 of the Constitution. It is not the law that prospective overruling or prospective operation can be done only by the Court which has rendered the decision. (Paras 50 to 61)

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Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643; *Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299; *Orissa Cement Ltd. v. State of Orissa*, 1991 Supp (1) SCC 430; *Somaiya Organics (India) Ltd. v. State of U.P.*, (2001) 5 SCC 519, followed

Linkletter v. Walker, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965); *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1, relied on

Lachhmi Narain Gupta v. Jarnail Singh, 2011 SCC OnLine P&H 8144, approved

The Supreme Court in *Golak Nath*, (1967) 2 SCR 762 and *Ashok Kumar Gupta*, (1997) 5 SCC 201, has laid down that Article 142 empowers the Supreme Court to mould the relief to do complete justice. To conclude this point, the purpose of holding that *M. Nagaraj case* would have a prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in *M. Nagaraj case*. Most of them would have already retired from service on attaining the age of superannuation. The judgment of *M. Nagaraj case* was delivered in 2006, interpreting Article 16(4-A) of the Constitution which came into force in 1995. As making the principles laid down in *M. Nagaraj case* effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time, it is necessary that the judgment of *M. Nagaraj case* should be declared to have prospective effect. (Para 62)

M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013, held to have prospective effect

A decision on a point not necessary for the purpose of or which does not fall for determination in that decision becomes an obiter dictum. It is a well-settled proposition that only the ratio decidendi can act as the binding or authoritative precedent. Reliance placed on mere general observations or casual expressions of the Court, is not of much avail. (Paras 60 and 61)

Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643; *Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299; *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1; *Madhav Rao Jivaji Rao Scindia v. Union of India*, (1971) 1 SCC 85; *Girnar Traders v. State of Maharashtra*, (2007) 7 SCC 555, relied on

M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076, held obiter and per incuriam on this point

The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a “group”, which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. The sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for the collection of data. However, for the purpose of collection of quantifiable data to assess the representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a “group”, is the unit and the data has to be collected with respect to each cadre. Therefore, the conclusion in *B.K. Pavitra (2) case* approving the collection of data on the basis of “groups” and not cadres is contrary to the law laid down in *M. Nagaraj case* and *Jarnail Singh case*. (Paras 64 to 69)

M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013; *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86, relied on

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B.K. Pavitra v. Union of India, (2019) 16 SCC 129, *overruled*

a It is made clear that the Court has not expressed any opinion on the merits of any individual case as the Court has only answered the common issues that were formulated after hearing the parties. (Para 70)

SS-D/68699/CL

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The Judgment of the Court was delivered by

L. NAGESWARA RAO, J.— Leave granted. Reservation of 27% in favour of Backward Classes was the subject-matter of dispute in *Indra Sawhney v. Union of India*¹. This Court was of the opinion that Article 16(4) of the Constitution of India does not provide for reservation in the matter of promotions. It was clarified that the judgment shall have prospective operation and shall not affect the promotions already made, whether made on regular or on any other basis. Reservation provided in the matter of promotions in the Central services or State services was directed to be continued for a period of five years from the date of the judgment. b c

2. By the Constitution (Seventy-seventh Amendment) Act, 1995, which came into force on 17-6-1995, Article 16 of the Constitution was amended by insertion of Article 16(4-A), which then read as below:

“16. (4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.” d

3. The above amendment was made in view of the State’s opinion that representation of the Scheduled Castes and the Scheduled Tribes (“SCs” and “STs”) in services in the States had not reached the required level and that it was necessary to continue the existing dispensation by providing reservation in promotions. Therefore, the Government decided to continue the existing policy of reservation in promotions for the SCs and the STs, according to the Statement of Objects and Reasons of the Constitution (Seventy-seventh Amendment) Act, 1995. e

4. In *Union of India v. Virpal Singh Chauhan*², this Court held that roster-point promotees who were given the benefit of accelerated promotion would not get consequential seniority. As the Government was of the opinion that the concept of “catch-up” rule was not in the interest of SCs and STs in the matter of seniority on promotion, Article 16(4-A) was further amended by the Constitution (Eighty-fifth Amendment) Act, 2001 to give the benefit of consequential seniority in addition to accelerated promotion. At present, Article 16(4-A) reads as follows: f g

“16. (4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the h

1 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

2 (1995) 6 SCC 684 : 1996 SCC (L&S) 1

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Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

- a* 5. A number of vacancies which were reserved for SCs and STs could not be filled up due to non-availability of candidates belonging to these categories. Such of these vacancies which were not filled up were treated as “backlog vacancies” and were carried forward. In *Indra Sawhney*¹, this Court held that reservations contemplated in a year under Article 16(4) shall not exceed 50%. In practice, backlog vacancies were not included within the ceiling of 50% reservation in a year. An office memorandum was issued on 29-8-1997 making
- b* the 50% limit applicable to current as well as backlog vacancies, in accordance with *Indra Sawhney*¹. Thereafter, several representations were made to the Central Government about the injustice that would be caused to the members of SCs and STs in view of the office memorandum dated 29-8-1997, which led to a further amendment to Article 16 of the Constitution of India, by insertion of Article 16(4-B) by the Constitution (Eighty-first Amendment) Act, 2000.

- c* 6. Article 16(4-B) reads as under:

- “16. (4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with
- d* the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”

7. The validity of the above amendments made to Article 16(4) was considered by this Court in *M. Nagaraj v. Union of India*³. The key issue that was identified and decided in *M. Nagaraj*³ is whether any constitutional limitation mentioned in Article 16(4) and Article 335 stood obliterated by
- e* the constitutional amendments resulting in Articles 16(4-A) and 16(4-B). This Court upheld the constitutional amendments. The amendments were held to be enabling provisions. This Court observed that the State is not bound to make reservation for SCs and STs in matters of promotion. However, if it wishes to exercise its discretion, the State has to collect quantifiable data showing the backwardness of the class and inadequacy of representation of that
- f* class in public employment, in addition to compliance with Article 335 of the Constitution of India.

8. This Court in *State of Tripura v. Jayanta Chakraborty*⁴ referred *M. Nagaraj*³ to a larger Bench for reconsideration. Further, in *State of Maharashtra v. Vijay Ghogre*⁵, this Court thought it appropriate that the request for reconsideration of the judgment in *M. Nagaraj*³ should be heard by a
- g* Constitution Bench. The request made for referring *M. Nagaraj*³ to a seven-Judge Bench was not entertained by this Court in *Jarnail Singh v. Lachhmi Narain Gupta*⁶. However, the conclusion arrived at in *M. Nagaraj*³ relating

1 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

3 (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

4 (2018) 1 SCC 146 : (2018) 1 SCC (L&S) 14

5 (2018) 17 SCC 261 : (2019) 1 SCC (L&S) 533

6 (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86

h

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to collection of quantifiable data showing backwardness of the SCs and the STs was held to be invalid as the same was contrary to a larger Bench judgment of this Court in *Indra Sawhney*¹, wherein it had been held by the Court that conditions of social and educational backwardness are presumed to be satisfied in case of SCs and STs as they are identified and grouped as such because of prior discrimination and its continuing ill effects. The Court rejected the remaining grounds of challenge to the decision in *M. Nagaraj*³ and reiterated that the State has to collect quantifiable data regarding inadequate representation of SCs and STs in the services of the State, if reservation is sought to be provided in promotions.

9. In the meanwhile, some High Courts have dealt with matters where reservation in promotions provided by the Central Government and the State Governments to SCs and STs have been assailed as being violative of the law laid down by this Court in *M. Nagaraj*³. The judgments^{7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,}

1 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

3 *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

7 *Lachmi Narain Gupta v. Jarnail Singh*, 2011 SCC OnLine P&H 8144

8 *Union of India v. Jarnail Singh*, 2011 SCC OnLine P&H 13175

9 *Rajeev Kesarwani v. All India Income Tax SC/ST Employees Welfare Federation*, 2011 SCC OnLine Bom 2135

10 *Union of India v. All India Income Tax SC/ST Employees Welfare Federation*, 2011 SCC OnLine Bom 2136

11 *Ashok Kumar Sharma v. Union of India*, SAW No. 1251 of 2011, order dated 12-9-2011 (Raj)

12 *All India Equality Forum v. Union of India*, 2017 SCC OnLine Del 10081

13 *Union of India v. Vinod Sharma*, 2018 SCC OnLine MP 1830

14 *Union of India v. Gian Singh Verma*, 2014 SCC OnLine HP 4191

15 *Union of India v. Inder Kumar*, 2018 SCC OnLine P&H 6993

16 *Union of India v. Inder Kumar*, 2018 SCC OnLine P&H 6992

17 *Union of India v. B. Ravikant*, 2018 SCC OnLine Chh 821

18 *Union of India v. Santosh Kumar Mandal*, 2018 SCC OnLine Chh 1002

19 *Shyodan Singh v. State of U.P.*, 2015 SCC OnLine All 8540

20 *State of Bihar v. Sushil Kumar Singh*, 2015 SCC OnLine Pat 6002

21 *R.B. Rai v. State of M.P.*, 2016 SCC OnLine MP 747

22 *Post Graduate Institute of Medical Education & Research v. CAT*, 2016 SCC OnLine P&H 38

23 *Union of India v. G. D. Choudhury*, 2018 SCC OnLine Chh 822

24 *S. Nageweswa Rao v. Union of India*, 2019 SCC OnLine CAT 270

25 *Railway Board, Ministry of Railways v. R.N. Maurya*, 2019 SCC OnLine Chh 374

26 *Jayanta Chakraborty v. State of Tripura*, 2015 SCC OnLine Tri 383

27 *Union of India v. A.K. Tiwari*, 2015 SCC OnLine Del 11544

28 *Union of India v. Dayal Bist*, 2016 SCC OnLine MP 12231

29 *Ram Krishan Singh v. Union of India*, 2017 SCC OnLine P&H 5477

30 *All India SC/ST Railway Employees Assn. v. All India Equality Forum*, 2017 SCC OnLine P&H 5482

31 *Union of India v. Ram Naresh*, 2015 SCC OnLine All 9685

32 *Union of India v. Sanjeev Malhotra*, 2017 SCC OnLine P&H 5478

33 *Union of India v. Shaneel Rana*, 2017 SCC OnLine P&H 5480

34 *Union of India v. CAT*, 2016 SCC OnLine P&H 19414

35 *State of Maharashtra v. Vijay Ghogre*, 2017 SCC OnLine Bom 7398

36 *PGIMER v. CAT*, 2017 SCC OnLine P&H 5479

37 *State of Maharashtra v. Vijay Ghogre*, 2017 SCC OnLine Bom 6756

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38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 of the High Courts have been challenged before

- a** this Court. In view of the broad similarities in the issues involved, all the cases were tagged together. On 18-1-2021⁷³, a direction was given to the Advocates-on-Record appearing for each State to submit a note to the learned Attorney General for India, identifying the issues involved in their respective cases. The learned Attorney General for India was requested to hold a conference with the counsel appearing in the matters to finalise the issues for determination and a
- b** list of issues with reference to each State was directed to be prepared thereafter. A note was submitted by the learned Attorney General formulating issues that arise for our consideration.

10. When the matter was listed for hearing on 14-9-2021, it was made clear that this Court⁷⁴ would not entertain any arguments for reconsideration of the

- c**
- 38 *State of Maharashtra v. Vijay Ghogre*, 2016 SCC OnLine Bom 5177
39 *State of Maharashtra v. Vijay Ghogre*, 2016 SCC OnLine Bom 16133
40 *Pramod Kumar Shukla v. Union of India*, 2018 SCC OnLine Del 13425
41 *Union of India v. Bhaskar Guha*, 2018 SCC OnLine Chh 820
42 *Railway Board v. Nagendra Kumar*, 2018 SCC OnLine MP 1836
43 *Sunkara Radhakrishna v. Union of India*, 2019 SCC OnLine CAT 27077
44 *Aman Kumar v. State of Punjab*, 2018 SCC OnLine P&H 6990
- d**
- 45 *Union of India v. Vishesh Kumar*, 2017 SCC OnLine P&H 5476
46 *Union of India v. Manohar Singh*, 2017 SCC OnLine Raj 2648
47 *Union of India v. All India Equality Forum*, 2017 SCC OnLine P&H 5481
48 *Union of India v. Santosh Kumar Mishra*, 2018 SCC OnLine MP 1835
49 *Union of India v. Nar Singh Thakur*, 2017 SCC OnLine Pat 3731
50 *Union of India v. Dilip Kumar Chouhan*, 2018 SCC OnLine MP 1837
51 *Union of India v. Vinod Sharma*, 2018 SCC OnLine MP 1838
- e**
- 52 *Union of India v. Raj Kumar*, 2018 SCC OnLine Del 13426
53 *Arbind Kumar v. State of Bihar*, 2019 SCC OnLine Pat 3360
54 *Union of India v. Kaushik Mukhopadhyay*, 2019 SCC OnLine Chh 376
55 *Union of India v. Ranjan Kumar Pradhan*, WP (C) No. 22093 of 2018, order dated 18-4-2019 (Ori)
56 *Union of India v. Vijay Bahadur Mishra*, 2018 SCC OnLine Chh 826
57 *Union of India v. J. Murali Krishna Das*, 2018 SCC OnLine Chh 823
58 *Union of India v. Sudarshan Dhari*, 2018 SCC OnLine Chh 824
- f**
- 59 *Union of India v. Jitendra Kumar*, 2019 SCC OnLine Chh 375
60 *Union of India v. Ajit Kumar Singh*, 2018 SCC OnLine Chh 825
61 *Union of India v. Sk. Zainuddin*, 2018 SCC OnLine Hyd 2012
62 *Bhupinder Singh Hira v. Prem Chand Guleria*, 2016 SCC OnLine P&H 15542
63 *P.S. Sastry v. Union of India*, 2018 SCC OnLine CAT 28639
64 *Union of India v. P.S. Sastry*, 2019 SCC OnLine CAT 27071
65 *A. Nambirajan v. Railway Protection Force*, 2019 SCC OnLine Mad 38981
- g**
- 66 *Postgraduate Institute of Medical Education & Research v. Darshan Kaur Cheema*, 2019 SCC OnLine P&H 6254
67 *Union of India v. Alok Kumar*, 2018 SCC OnLine Chh 1001
68 *Union of India v. Pawan Kumar Sinha*, 2019 SCC OnLine Chh 390
69 *Union of India v. CAT*, 2020 SCC OnLine P&H 4414
70 *Prakash Vir v. BSNL*, 2020 SCC OnLine CAT 17272
71 *Ramesh Kumar v. BSNL*, 2020 SCC OnLine CAT 17273
- h**
- 72 *M. Laxminarayana v. South Central Railway*, 2019 SCC OnLine CAT 21673
73 *Jarnail Singh v. Lachhmi Narain Gupta*, 2021 SCC OnLine SC 3155
74 *Jarnail Singh v. Lachhmi Narain Gupta*, (2022) 10 SCC 637

law laid down by this Court in *M. Nagaraj*³ as a Constitution Bench in *Jarnail Singh*⁶ had rejected such a request. This Court was informed that the cases in this batch of matters can be bifurcated into eleven categories. As the common issues that have been raised could be decided without reference to the facts of each case, the learned counsel appearing for the parties were requested to make submissions on the issues that had been identified by the learned Attorney General.

11. After considering the issues identified by the learned Attorney General and other learned counsel and hearing them, the following six points are formulated for determination:

11.1. (1) What is the yardstick by which, according to *M. Nagaraj*³, one would arrive at quantifiable data showing inadequacy of representation of SCs and STs in public employment?

11.2. (2) What is the unit with respect to which quantifiable data showing inadequacy of representation is required to be collected?

11.3. (3) Whether proportion of the population of SCs and STs to the population of India should be taken to be the test for determining adequacy of representation in promotional posts for the purposes of Article 16(4-A)?

11.4. (4) Should there be a time period for reviewing inadequacy of representation?

11.5. (5) Whether the judgment in *M. Nagaraj*³ can be said to operate prospectively?

11.6. (6) Whether quantifiable data showing inadequacy of representation can be collected on the basis of sampling methods, as held by this Court in *B.K. Pavitra v. Union of India*⁷⁵ [*"B.K. Pavitra (2)"*]?

(1) Yardstick for arriving at quantifiable data

12. Articles 16(4) and 16(4-A) are enabling provisions. It was held in *M. Nagaraj*³ that the discretion of the State to provide reservation is subject to the existence of backwardness and inadequacy of representation in public employment. It was further held that backwardness has to be based on objective factors whereas inadequacy has to factually exist. There is no fixed yardstick to identify equality, justice and efficiency which are variable factors and it depends on the facts and circumstances of each case. This Court was of the further opinion that the concepts of efficiency, backwardness, inadequacy of representation are required to be identified and measured on the basis of data. In case of a challenge made to reservations provided by the State Government, it is incumbent on the State Government to satisfy the Court that the decision is supported by quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution of India.

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86
⁷⁵ (2019) 16 SCC 129

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13. The exercise of identifying and measuring concepts of efficiency, backwardness and inadequacy of representation on the basis of data depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.⁷⁶

14. The learned Attorney General argued before this Court in *Jarnail Singh*⁶ that this Court did not indicate any test for determining adequacy of representation in service in *M. Nagaraj*³. He submitted that it is important to decide the yardstick applicable for arriving at quantifiable data showing inadequacy of representation of SCs and STs to avoid multiple litigation. This Court refused to lay down any criteria for determining the adequacy of representation, as the States were given liberty to determine the factors relevant for deciding adequate representation, depending upon the promotional posts in question.

15. It is well-established that it is neither legal nor proper for the courts to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within their domain under the Constitution⁷⁷. In *Asif Hameed v. State of J&K*⁷⁸, this Court observed as under: (SCC p. 374, para 19)

“19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive,...”

16. In *P. Ramachandra Rao v. State of Karnataka*⁷⁹, R.C. Lahoti, J. referred to a monograph “Judicial Activism and Constitutional Democracy in India” by T.R. Andhyarujina, in his judgment. While lauding judicial activism, a note of caution was sounded in the said monograph to the effect that the Supreme Court should leave “the decision-making to the other branches of Government after directing their attention to the problems rather than itself entering into the remedial field”. The following sentences from the monograph are very well

⁷⁶ *U.P. Power Corpn. Ltd. v. Rajesh Kumar*, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁷⁷ *Mallikarjuna Rao v. State of A.P.*, (1990) 2 SCC 707 : 1990 SCC (L&S) 387

⁷⁸ 1989 Supp (2) SCC 364 : 1 SCEC 358

⁷⁹ (2002) 4 SCC 578 : 2002 SCC (Cri) 830

borne out in this particular context: (*P. Ramachandra Rao case*⁷⁹, SCC p. 600, para 24)

“24. ... ‘... courts lack the facilities to gather detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge or research it is bound to be selective and subjective. ... Moreover, since courts mandate for isolated cases, their decrees make no allowance for the differing and varying situations which administrators will encounter in applying the mandates to other cases.’ ”

17. Determination of inadequate representation of SCs and STs in services under a State is left to the discretion of the State, as the determination depends upon myriad factors which this Court cannot envisage. A conscious decision was taken by this Court in *M. Nagaraj*³ and *Jarnail Singh*⁶ to leave it to the States to fix the criteria for determining inadequacy of representation. The submission of the learned Attorney General for India that this Court has to lay down the yardstick for measuring adequacy of representation did not yield a favourable result as this Court in *Jarnail Singh*⁶ found it befitting for the States to have the liberty to evaluate the representation of SCs and STs in public employment. Laying down of criteria for determining the inadequacy of representation would result in curtailing the discretion given to the State Governments. In addition, the prevailing local conditions, which may require to be factored in, might not be uniform. Moreover, in *M. Nagaraj*³, this Court made it clear that the validity of law made by the State Governments providing reservation in promotions shall be decided on a case-to-case basis for the purpose of establishing whether the inadequacy of representation is supported by quantifiable data. Therefore, we are of the opinion that no yardstick can be laid down by this Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation.

(2) Unit for collecting quantifiable data

18. Seniority of Superintending Engineers in the Irrigation Department of the State of Punjab was the subject-matter of a writ petition filed under Article 32 of the Constitution of India in *R.K. Sabharwal v. State of Punjab*⁸⁰. The relevant instructions issued by the State of Punjab provided for 14% reservation for SCs. Two points came up for consideration before this Court in the said judgment, the first being that in case more than 14% of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority, then the purpose of reservation having been achieved in the said cadre, the government instructions providing reservations would become inoperative. The second point on which arguments were heard is that roster cannot operate once

⁷⁹ *P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86

⁸⁰ (1995) 2 SCC 745 : 1995 SCC (L&S) 548

a the posts earmarked for the SCs, STs and Backward Classes are filled. Any post falling vacant in a cadre, thereafter, is to be filled from the category—reserved or general—due to retirement, etc. of whose member the post fell vacant.

b 19. The first point raised by general category candidates was rejected by this Court by holding that reserved category candidates can compete for non-reserved posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. This Court was of the opinion that Article 16(4) of the Constitution of India enables the State Government to make provision for reservation in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the services. The percentage of posts reserved for Backward Classes, as prescribed by the State, has to be strictly followed and cannot be varied or changed simply because some members of the Backward Class have already been appointed/promoted against the general
c seats.

d 20. The second point relates to the implementation of the roster in the form of “running account” year to year. Roster points were fixed in a lot of 100 posts. This Court held that once 14% posts earmarked in the roster are filled up, the result envisaged by the instructions is achieved. Thereafter, there is no justification for operating the roster. This Court observed that the “running account” is to operate only till the quota provided by the instructions is reached and not thereafter. The vacancies arising in the cadre, after the initial posts are filled, will have to be filled from amongst the category to which the post belonged in the roster.

e 21. In *M. Nagaraj*³, this Court observed that the appropriate Government has to apply cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. Cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Following the law laid down in *R.K. Sabharwal*⁸⁰, this Court in *M. Nagaraj*³ further held that the roster has to be post-specific and not vacancy based.

f 22. In *M. Nagaraj*³, this Court held that it is open to the State to provide for reservation in promotions subject to limitation that there must exist compelling reasons for backwardness, inadequacy of representation *in a class of post(s)* keeping in mind the overall administrative efficiency. While referring to the roster, this Court observed that the appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain
g whether a given class/group is adequately represented in the service. Collection of quantifiable data regarding inadequacy of representation as stipulated by *M. Nagaraj*³ is relatable to the cadre concerned, according to *Jarnail Singh*⁶.

h ³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁸⁰ *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86

23. While it is clear that the unit for collection of quantifiable data is with respect to a cadre, it is necessary to understand what *cadre* means. For a better appreciation, it would be profitable to relate to the historical background of the rules concerned applicable to services under the Centre as well as the States. In exercise of the powers conferred by sub-section (2) of Section 96-B of the Government of India Act, 1919, the Secretary of State in Council made the Civil Services (Classification, Control and Appeal) Rules, 1930. Public services in India were classified as per Rule 14 of the said Rules in the following manner: (i) the all India Services; (ii) the Central Services, Class-I; (iii) the Central Services, Class-II; (iv) the Provincial Services; (v) the Specialist Services; and (vi) the Subordinate Services.

24. The First Central Pay Commission considered the classification of services to “*secure fair treatment to the employees on the basis of their services to Government, fair return to the Government for the salary paid to its employees, and relative fairness to employees in different kinds of position on the basis of the nature of the duties performed*”. According to the Report of the First Central Pay Commission, the Central Services were broadly divided into four categories i.e. Class I, Class II, Subordinate Services and Inferior Services. After taking note of some objections regarding the use of the words “subordinate” and “inferior” as being derogatory, the First Central Pay Commission recommended that those categories be referred to as Class III and Class IV.

25. The classification of the Civil Services of the Union of India as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (“the CCA Rules, 1965”) is: (1) Central Civil Services, Class I; (2) Central Civil Services, Class II; (3) Central Civil Services, Class III; and (4) Central Civil Services, Class IV. Rule 4 of the said Rules provides that a particular class can comprise of different grades. All civil posts under the Union were reclassified from “Class” to “Group” by way of the Notification of the Government of India in the Department of Personnel and Administrative Reforms number S.O. 5041 dated 11-11-1975 and as recorded in Rule 6-A of the CCA Rules, 1965. Thereafter, the Central Civil Services/the Central Civil Posts were organised into Group ‘A’, Group ‘B’, Group ‘C’ and Group ‘D’. The present structure of the Central Civil Services is that a particular Service is divided across Groups, which further consist of grades.

26. During the course of the hearing, the Union of India has filed an affidavit informing this Court of the compliance of the conditions prescribed in *M. Nagaraj*³ before making reservation in promotions in services under the Centre. The Union of India referred to an Office Memorandum dated 2-7-1997, which heavily relied on *R.K. Sabharwal*⁸⁰, wherein this Court had held that the cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence, the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The Union of India has brought to the notice of this Court that there are around

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁸⁰ *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548

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90 Ministries/Departments under the Government of India in which 30 lakh employees are working. Referring to information received from 44 Ministries/ Departments out of the 90, the Union of India has stated that there are around 3800 cadres. We were also apprised of the fact that instructions have been in existence since 2013 for appointment of an officer of the rank of Deputy Secretary to the Government of India as a Liaison Officer, who is responsible for ensuring compliance of the instructions on reservation.

27. According to the affidavit filed by the Union of India, thousands of reservation rosters are being maintained in the various offices/units/sub-units of the Departments and Ministries in the Government of India. Office Memorandum dated 2-7-1997 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India contains principles for preparing the rosters. According to Para 4(c) of the said office memorandum, “cadre”, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Explanatory Notes which are appended to the Office Memorandum dated 2-7-1997 elaborate the principles for making and operating post-based rosters.

28. Para 5 of the Explanatory Notes reads as follows:

“While cadre is generally to be construed as the number of posts in a particular grade, for the purpose of preparation of roster, it shall comprise posts required to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate, in a cadre comprising 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotions, the roster for direct recruitment shall have 100 points and that for promotion shall have 100 points — thus making a total of 200.”

29. The Union of India has filed the prevalent service rules of the States of Andhra Pradesh, Uttar Pradesh, West Bengal, Rajasthan, Madhya Pradesh, Punjab and Himachal Pradesh for the purpose of demonstrating the implementation of reservation in promotions in services under these States. Rule 2(8) of the Andhra Pradesh State and Subordinate Services Rules, 1996 defines “cadre” as posts in various classes, categories and grades in a service. “Service” has been defined in Rule 2(30) as a post or a group of posts or categories of posts classified by the State Government as State or Subordinate Service, as the case may be. Rule 22 which deals with Special Representation (Reservation) empowers the State Government to make a provision for reservation in promotions. The said Rule refers to the implementation of a 100-point roster for promotion to the next higher category. It would be relevant to refer to the reservation policy of the State of Punjab according to which reservation for SCs and STs is on the basis of roster registers maintained for each category of posts. The State of Himachal Pradesh has decided to provide reservation in promotions by following the Explanatory Notes to the Office Memorandum issued by the Government of India dated 2-7-1997.

30. It would be relevant to refer to the judgments of this Court which have dealt with the scope of the expression “cadre”. Rule 4(2) of the Central Engineering Service, Class I, Recruitment Rules, 1954 provided that 75% of the vacancies in the grade of Executive Engineer, Class I shall be filled by promotion from Assistant Executive Engineers, Class I. Interpreting the words “vacancies in the grade of Executive Engineer”, this Court in *A.K. Subraman v. Union of India*⁸¹ held that the word “grade” is used in the sense of cadre.

31. The dispute that arose for consideration of this Court in *Chakradhar Paswan v. State of Bihar*⁸² relates to the posts of Director and three Deputy Directors in the Directorate of Indigenous Medicines, Department of Health, State of Bihar being grouped together for the purpose of implementing the policy of reservation under Article 16(4) of the Constitution of India. This Court was of the opinion that though the Director and three Deputy Directors are Class I posts, the posts of Director and Deputy Directors do not constitute one “cadre”. It was held that the term “cadre” has a definite legal connotation in service jurisprudence. This Court referred to Fundamental Rule 9(4) which defines the word “cadre” to mean the strength of a service or part of a service sanctioned as a separate unit. It was observed that as the post of Director is the highest post in the Directorate of Indigenous Medicines for which a higher pay scale is prescribed in comparison to Deputy Directors, who are entitled to a lower scale of pay, they constitute two distinct cadres or grades. This Court further expressed its view that it is open to the Government to constitute as many cadres in any particular service as it may choose, according to administrative convenience and expediency. This Court concluded that the post of Director and Deputy Directors constitute different cadres in the service.

32. In *K. Manickaraj v. Union of India*⁸³, the appellant was a Welfare Inspector, Grade III belonging to Scheduled Caste category. He claimed promotion to Grade II by contending that four posts were reserved for Scheduled Castes as there were 26 Grade II posts. The respondent contended that there were only 23 Grade II posts as three Grade III posts which were temporarily upgraded to Grade II did not form part of the cadre strength of Grade II Inspectors. While allowing the appeal of K. Manickaraj, this Court recognised that promotions take place from one grade to a higher grade, with the cadre strength for the purpose of providing reservation in such promotion to be the total number of posts available in the grade to which promotion was sought.

33. The meaning of “cadre” fell for consideration of this Court again in *Union of India v. Pushpa Rani*⁸⁴. “Cadre” in the 1985 Edn. of the Railway Establishment Code is defined as the strength of a service or a part of a service sanctioned as a separate unit. This Court held that the posts sanctioned in different grades would constitute independent cadres, even for the purpose of

81 (1975) 1 SCC 319 : 1975 SCC (L&S) 36

82 (1988) 2 SCC 214 : 1988 SCC (L&S) 516

83 (1997) 4 SCC 342 : 1997 SCC (L&S) 949

84 (2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851

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a implementing the roster. The reason for giving an enlarged meaning to the term “cadre” was that the posts in the railway establishment are sanctioned with reference to grades. Even temporary, work-charged, supernumerary and shadow posts created in different grades can constitute part of the cadre.

34. It is relevant to refer to another judgment of this Court in *State of Rajasthan v. Fateh Chand Soni*⁸⁵, wherein the meaning of “promotion” was looked into. This Court held that “promotion” not only covered advancement to higher position or rank but also implied advancement to a higher grade.

b **35.** Whether the officers serving in Arms, Arms Support and Services comprise a single cadre for purposes of promotion was the question adjudicated by this Court in *Union of India v. P.K. Choudhary*⁸⁶. This Court held that they do not constitute a single cadre, even though they might be drawing the same salary, holding the same rank, wearing the same uniform and serving the same employer with similar service benefits. As the officers were
c allocated to different Arms and Services which put them in distinct cadres, with promotional avenues being made available against the posts comprising that cadre alone, there cannot be constitution of a common cadre. This Court referred to an earlier judgment in *Sub-Inspector Rooplal v. Lt. Governor*⁸⁷ in which it was held that equivalence of two posts is not judged by the sole factor of equal pay. There are four factors in that regard, namely: (i) the nature and
d duties of the post; (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. This Court, in *P.K. Choudhary*⁸⁶, was of the further opinion that transferability or interchangeability of one incumbent to another in the cadre are essential attributes of a common cadre.

e **36.** In *R.K. Sabharwal*⁸⁰, this Court held that the right to be considered for appointment can only be claimed in respect of a post in a cadre and that the concept of “vacancy” has no relevance in operating the percentage of reservation. It was further held that the cadre strength is always measured by the number of posts comprising the cadre.

f **37.** It is clear from the above statutory regime and the law laid down by this Court that civil posts under the Government are organised into different services. A service constitutes “classes”/“groups” of posts. A “class”/“group” is further bifurcated into grades. Though the nomenclature might be different, the structure of services under the Union and the States is similar. According to the instructions issued by the Union of India, cadres are constituted for each
g grade. At the cost of repetition, the Union of India submitted that there are 3800 cadres in 44 Ministries/Departments. Fundamental Rule 9(4) defines “cadre” to mean the strength of a service or part of a service sanctioned as a separate unit. It is the choice of a State to constitute cadres. The entire service cannot be

85 (1996) 1 SCC 562 : 1996 SCC (L&S) 340

h 86 (2016) 4 SCC 236 : (2016) 1 SCC (L&S) 640

87 (2000) 1 SCC 644 : 2000 SCC (L&S) 213

80 *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548

considered to be a cadre for the purpose of promotion from one post to a higher post in a different grade. Promotion is made from one grade to the next higher grade, in relation to which cadres are constituted. This Court in *Chakradhar Paswan*⁸² has categorically stated that the post of Director and Deputy Director cannot form one cadre. A cadre is constituted by the Government by taking into account several factors within its sole discretion.

38. In the Office Memorandum dated 2-7-1997, the Union of India set out the principles for making and operating post-based rosters, in which it has been expressly stated that cadre is to be construed as the number of posts in a particular grade. It is made clear that rosters have been prepared grade-wise which are reviewed on a yearly basis and that reservation in promotions is implemented on the basis of these rosters, which operate grade-wise. In *M. Nagaraj*³, this Court approved that the percentage of reservation in promotions was to be applied to the entire cadre strength, as held in *R.K. Sabharwal*⁸⁰. While doing so, this Court in *M. Nagaraj*³ made it clear that the unit for operation of the roster would be the cadre strength. Before providing for reservation in promotions to a cadre, the State is obligated to collect quantifiable data regarding inadequacy of representation of SCs and STs. Collection of information regarding inadequacy of representation of SCs and STs cannot be with reference to the entire service or “class”/“group” but it should be relatable to the grade/category of posts to which promotion is sought. Cadre, which should be the unit for the purpose of collection of quantifiable data in relation to the promotional post(s), would be meaningless if data pertaining to representation of SCs and STs is with reference to the entire service.

(3) Proportionate representation as test of adequacy

39. In *R.K. Sabharwal*⁸⁰, it was observed that State Governments may take the total population of a particular Backward Class and its representation in the State services for the purpose of coming to a conclusion that there is inadequate representation in the State services.

40. In *M. Nagaraj*³, this Court was of the considered view that the exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment. As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter-balanced will depend on the facts and circumstances of each case. The attempt of the learned Attorney General for India to impress upon this Court that the proportion of SCs and STs in the population of India should be taken as the test for determining whether they are adequately represented in promotional posts, did not yield results.

⁸² *Chakradhar Paswan v. State of Bihar*, (1988) 2 SCC 214 : 1988 SCC (L&S) 516

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁸⁰ *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548

- 41.** This Court in *Jarnail Singh*⁶ found no fault with *M. Nagaraj*³ regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasising the contrast in the language used between Article 330 and Articles 16(4-A) and 16(4-B) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs and STs to the population of India should be the test for determining inadequacy of representation in promotional posts. Therefore, we are not persuaded to express any opinion on this aspect. It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors.

(4) Time period for review

- 42.** There is near unanimity amongst the counsel for both sides that the data collected to establish inadequacy of representation, which forms the basis for providing reservation for promotions, should be reviewed periodically. Ms Indira Jaising, learned Senior Counsel appearing for members of the reserved categories, supported the submissions of the learned Attorney General for India that a review should be conducted every 10 years. Mr Gopal Sankaranarayanan, learned Senior Counsel, submitted that it is time for reservation in public employment to be discontinued. Additionally, he submitted that the lion's share of reservation for members of SCs and STs accrued to the benefit of a select few within these categories, which further strengthened the requirement for review to appraise whether certain groups/classes within these categories had achieved the desired representation.

- 43.** We are not inclined to express any view on discontinuation of reservations in totality, which is completely within the domain of the legislature and the executive. As regards review, we are of the opinion that data collected to determine inadequacy of representation for the purpose of providing reservation in promotions needs to be reviewed periodically. The period for review should be reasonable and is left to the Government to set out.

(5) Prospective operation of the judgment in *M. Nagaraj*³

- 44.** While holding that Article 16(4-A) does not provide for reservation in matters of promotion, this Court in *Indra Sawhney*¹ saved the promotions that were already made. It was made clear that the judgment shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. Already-existing provisions made for reservation in promotions in Central or State services were permitted to continue to operate for a period of five years from the date of the judgment in *Indra Sawhney*¹. Article 16(4-A) was brought into force from 17-6-1995.

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86
³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013
¹ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

45. This Court upheld the validity of Article 16(4-A) in *M. Nagaraj*³ on 19-10-2006 and observed that reservation in promotions in public services can be made, subject to collection of quantifiable data by the State showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution. Reservation in promotions provided by various State Governments and the Central Government have been challenged in the High Courts on the ground of non-compliance with the requirement of collection of quantifiable data showing backwardness of the class and inadequacy of representation. It is relevant to mention at this stage that collection of quantifiable data regarding backwardness of SCs and STs is no more required in view of the judgment of this Court in *Jarnail Singh*⁶. In respect of the data relating to inadequacy of representation of SCs and STs, the High Courts have adjudicated writ petitions which are the subject-matter of special leave petitions pending in this Court.

46. The duty of the court is not to “pronounce a new law, but to maintain and expound the old one”.⁸⁸ Holmes, J., in his dissent in *Barton Kuhn v. Fairmont Coal Co.*⁸⁹, held: (SCC OnLine US SC para 35)

“35. ... I know of no authority in this Court to say that, in general, State decisions shall make law only for the future. Judicial decisions have had retrospective operation for near a thousand years.”

47. In *M. Nagaraj*³, this Court upheld the constitutional validity of Article 16(4-A), subject to the State collecting quantifiable data showing inadequate representation. The law declared by this Court interpreting Article 16(4-A) in *M. Nagaraj*³ applies from 17-6-1995 i.e. the date on which Article 16(4-A) came into force. (See: *Ravi S. Naik v. Union of India*⁹⁰; *Lily Thomas v. Union of India*⁹¹.) The contention put forth by the learned Attorney General for India and the learned counsel appearing for the reserved category candidates, which requires to be examined, is regarding the prospective applicability of the law laid down in *M. Nagaraj*³ i.e. from the date of the judgment.

48. This Court, in *Golak Nath v. State of Punjab*⁹², held that Parliament had no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights. However, to save the past transactions, the doctrine of prospective overruling was invoked and the judgment was given prospective operation. The following propositions were laid down in *Golak Nath case*⁹²: (AIR p. 1669, para 51)

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86

⁸⁸ Blackstone, *Commentaries* 69 (15th Edn. 1809)

⁸⁹ 1910 SCC OnLine US SC 2 : 54 L Ed 228 : 215 US 349 (1910)

⁹⁰ 1994 Supp (2) SCC 641

⁹¹ (2000) 6 SCC 224 : 2000 SCC (Cri) 1056

⁹² (1967) 2 SCR 762 : AIR 1967 SC 1643

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“51. ... (1) The doctrine of prospective overruling can be invoked only in matters arising out of the Constitution;

a (2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;

(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.”

b While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions.

c 49. The power of this Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition.⁹³ In *Orissa Cement Ltd. v. State of Orissa*⁹⁴, this Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case, as has been held in *Somaiya Organics (India) Ltd. v. State of U.P.*⁹⁵ It was further clarified that while in *Golak Nath*⁹², “prospective overruling” implied an earlier judicial decision on the same issue which was otherwise final, this Court had used the power even when deciding on an issue for the first time. There is no need to refer to other judgments of this Court which have approved and applied the principle of prospective overruling or prospective operation of judgments. There cannot be any manner of doubt that this Court can apply its decision prospectively i.e. from the date of its judgment to save past transactions.

e 50. While objecting to the contention of the learned Attorney General for India to declare the law laid down by *M. Nagaraj*³ as having prospective operation, Mr Rakesh Dwivedi, learned Senior Counsel appearing for the unreserved candidates, submitted that relief can be moulded in exercise of the power under Article 142 of the Constitution. It is no doubt true that *M. Nagaraj*³ did not state that it would be prospective in operation. It is necessary for this Court to examine whether a judgment can be made prospectively applicable subsequently by a different Bench of this Court. The doctrine of prospective overruling was applied to Indian law in *Golak Nath*⁹² by following the theory which was prevalent in the United States of America. Reference was made to the judgment of *Linkletter v. Walker*⁹⁶ which declared an earlier decision of the US Supreme Court in *Mapp v. Ohio*⁹⁷ to be prospective in operation.

93 *Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299

94 1991 Supp (1) SCC 430

95 (2001) 5 SCC 519

92 *Golak Nath v. State of Punjab*, (1967) 2 SCR 762 : AIR 1967 SC 1643

h 3 *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

96 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)

97 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)

51. For a better understanding, it is necessary to refer to the issue in *Linkletter*⁹⁶. The United States Supreme Court in *Fremont Weeks v. United States*⁹⁸ held that illegally-seized evidence cannot be used in federal courts, by establishing the exclusionary rule. The applicability of the exclusionary rule to States fell for consideration in *Wolf v. People of the State of Colorado*⁹⁹. Taking note of the fact that 16 States adopted the exclusionary rule laid down in *Weeks*⁹⁸ while 31 other States rejected the exclusionary rule, the US Supreme Court held that it was not a departure from basic standards of due process to allow States to introduce illegally-obtained evidence in State trials. Later, the US Supreme Court in *Mapp*⁹⁷ held that the exclusion of evidence seized in violation of search and seizure provisions of the Fourth Amendment was required of the States by the due process clause of the Fourteenth Amendment.

52. In *Linkletter*⁹⁶, the US Supreme Court was confronted with the question of prospective operation of its earlier judgment in *Mapp*⁹⁷. The overruling of the judgment in *Wolf v. People of the State of Colorado*⁹⁹ by *Mapp*⁹⁷ was made prospective by the US Supreme Court by making the following observations: (*Linkletter case*⁹⁶, SCC OnLine US SC paras 22-25)

“22. We believe that the existence of the *Wolf*⁹⁹ doctrine prior to *Mapp*⁹⁷ is ‘an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration’. *Chicot County Drainage Dist. v. Baxter State Bank*¹⁰⁰, US at p. 374 and S Ct at p. 319. The thousands of cases that were finally decided on *Wolf*⁹⁹ cannot be obliterated. The ‘particular conduct, private and official,’ must be considered. Here ‘prior determinations deemed to have finality and acted upon accordingly’ have ‘become vested’. And finally, ‘public policy in the light of the nature both of the (*Wolf*⁹⁹ doctrine) and of its previous application’ must be given its proper weight. Ibid. In short, we must look to the purpose of the *Mapp*⁹⁷ rule; the reliance placed upon the *Wolf*⁹⁹ doctrine; and the effect on the administration of justice of a retrospective application of *Mapp*⁹⁷.

23. It is clear that the *Wolf*⁹⁹ Court, once it had found the Fourth Amendment’s unreasonable Search and Seizure Clause applicable to the States through the Due Process Clause of the Fourteenth Amendment, turned its attention to whether the exclusionary rule was included within the command of the Fourth Amendment. This was decided in the negative. It is clear that based upon the factual considerations heretofore discussed the *Wolf*⁹⁹ Court then concluded that it was not necessary to the enforcement of the Fourth Amendment for the exclusionary rule to be extended to

96 *Linkletter v. Walker*, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)

98 1914 SCC OnLine US SC 61 : 58 L Ed 652 : 232 US 383 (1914)

99 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)

97 *Mapp v. Ohio*, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)

100 1940 SCC OnLine US SC 1 : 84 L Ed 329 : 60 S Ct 317 : 308 US 371 (1940)

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a the States as a requirement of due process. *Mapp*⁹⁷ had as its prime purpose the enforcement of the Fourth Amendment through the inclusion of the exclusionary rule within its rights. This, it was found, was the only effective deterrent to lawless police action. Indeed, all of the cases since *Wolf*⁹⁹ requiring the exclusion of illegal evidence have been based on the necessity for an effective deterrent to illegal police action. See e.g. *Rea v. United States*¹⁰¹. We cannot say that this purpose would be advanced by making the rule retrospective. The misconduct of the police prior to *Mapp*⁹⁷ has already occurred and will not be corrected by releasing the prisoners involved. Nor would it add harmony to the delicate State-federal relationship of which we have spoken as part and parcel of the purpose of *Mapp*⁹⁷. Finally, the ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late.

c 24. It is true that both the accused and the States relied upon *Wolf*⁹⁹. Indeed, *Wolf*⁹⁹ and *Irvine*¹⁰² each pointed the way for the victims of illegal searches to seek reparation for the violation of their privacy. Some pursued the same. See *Monroe v. Pape*¹⁰³. In addition, in *Irvine*, a flag in a concurring opinion warned that *Wolf*⁹⁹ was in stormy weather. On the other hand, the States relied on *Wolf*⁹⁹ and followed its command. Final judgments of conviction were entered prior to *Mapp*⁹⁷. Again and again this Court refused to reconsider *Wolf*⁹⁹ and gave its implicit approval to hundreds of cases in their application of its rule. In rejecting the *Wolf*⁹⁹ doctrine as to the exclusionary rule the purpose was to deter the lawless action of the police and to effectively enforce the Fourth Amendment. That purpose will not at this late date be served by the wholesale release of the guilty victims.

f 25. Finally, there are interests in the administration of justice and the integrity of the judicial process to consider. To make the rule of *Mapp*⁹⁷ retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witnesses available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice."

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97 *Mapp v. Ohio*, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)

99 *Wolf v. People of the State of Colorado*, 1949 SCC OnLine US SC 102 : 93 L Ed 1782 : 338 US 25 (1949)

101 1956 SCC OnLine US SC 8 : 100 L Ed 233 : 350 US 214 (1956)

h 102 *Irvine v. People of State of California*, 1954 SCC OnLine US SC 16 : 98 L Ed 561 : 347 US 128 (1954)

103 1961 SCC OnLine US SC 21 : 5 L Ed 2d 492 : 365 US 167 (1961)

53. The point to be noticed is that the US Supreme Court in *Linkletter*⁹⁶ declared its earlier judgment in *Mapp*⁹⁷ to be prospective in operation, after considering the consequences of *Mapp*⁹⁷ being given retrospective effect. a

54. This Court in *Indra Sawhney*¹ interpreted Article 16(4-A) of the Constitution by holding that reservation cannot be provided in promotions. However, reservation in promotions were permitted for a further period of five years from the date of the judgment. In *Ashok Kumar Gupta v. State of U.P.*⁹³, promotions in Public Works Department of the Government of Uttar Pradesh were challenged. One of the grounds of challenge was that the direction of the Supreme Court for prospective overruling of the judgment of this Court in *Southern Railway v. Rangachari*¹⁰⁴ and for operation of the ratio in *Indra Sawhney*¹ after five years from the date of the judgment was inconsistent with and contrary to the scheme of the Constitution. In other words, it was contended by the appellants in *Ashok Kumar Gupta*⁹³ that after having declared reservation in promotions under Articles 16(1) and 16(4) as unconstitutional and overruling *Rangachari*¹⁰⁴ as not being correct in law, the Court cannot postpone the operation of the judgment to a future date as it amounts to perpetration of void action and is violative of the appellants' fundamental rights. b

55. In *Ashok Kumar Gupta*⁹³, this Court was of the opinion that there is no prohibition for this Court to postpone the operation of the judgment in *Indra Sawhney*¹ or to prospectively overrule the ratio in *Rangachari*¹⁰⁴. This Court further held that: (*Ashok Kumar Gupta case*⁹³, SCC pp. 250-51, paras 60-61) c

“60. It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do “complete justice in the cause or matter”. The inconsistency with statute law made by Parliament arises when this Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase “complete justice” engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its d

⁹⁶ *Linkletter v. Walker*, 1965 SCC OnLine US SC 126 : 14 L Ed 2d 601 : 381 US 618 (1965)

⁹⁷ *Mapp v. Ohio*, 1961 SCC OnLine US SC 136 : 6 L Ed 2d 1081 : 367 US 643 (1961)

¹ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 e

⁹³ (1997) 5 SCC 201 : 1997 SCC (L&S) 1299

¹⁰⁴ (1962) 2 SCR 586 : AIR 1962 SC 36 f

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a backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise.

b 61. Admittedly, the Constitution has entrusted this salutary duty to this Court with power to remove injustice or to do complete justice in any cause or matter before this Court. *Rangachari*¹⁰⁴ ratio was in operation for well over three decades under which reservation in promotions were given to several persons in several services, grades or cadres of the Union of India or the respective State Governments. This Court, with a view to see that there would not be any hiatus in the operation of that law and, as held earlier, c to bring about smooth transition of the operation of law of reservation in promotions, by a judicial creativity extended the principle of prospective overruling applied in *Golak Nath case*⁹² in the case of statutory law and of the judicial precedent in *Karunakar case*¹⁰⁵ and further elongated the principle postponing the operation of the judgment in *Mandal case*¹ for five years from the date of the judgment. This judicial creativity is not anathema d to constitutional principle but an accepted doctrine as an extended facet of stare decisis. It would not be labelled as proviso to Article 16(4) as contended for.”

e 56. Whether the judgment of this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹⁰⁶ was prospective was the subject-matter of consideration in *Goan Real Estate & Construction Ltd. v. Union of India*¹⁰⁷. After a detailed consideration of the judgment in *Indian Council for Enviro-Legal Action*¹⁰⁶, this Court in *Goan Real Estate*¹⁰⁷ concluded that though not stated categorically in *Indian Council for Enviro-Legal Action*¹⁰⁶, it was the intention of this Court to give prospective effect to the judgment. The above is an instance where this Court declared an earlier judgment to have prospective f effect.

g 57. A contrary view was expressed by this Court in *M.A. Murthy v. State of Karnataka*¹⁰⁸ in which it was held that prospective overruling can be done only by the Court which has rendered the decision. The dispute that arose for consideration of this Court in the said judgment pertained to appointment to the posts of Manager (Finance and Accounts) in the Karnataka State Financial Corporation. The appellants challenged the selection of Respondent 4 before

104 *Southern Railway v. Rangachari*, (1962) 2 SCR 586 : AIR 1962 SC 36

92 *Golak Nath v. State of Punjab*, (1967) 2 SCR 762 : AIR 1967 SC 1643

105 *ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184

1 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

h 106 (1996) 5 SCC 281

107 (2010) 5 SCC 388

108 (2003) 7 SCC 517 : 2003 SCC (L&S) 1076

the Karnataka High Court. Though the learned Single Judge of the High Court found Respondent 4 therein to be ineligible as on the date of his appointment, the selection was not disturbed on the ground that he obtained qualifications by the time of interview. The learned Single Judge relied upon the judgment of this Court in *Ashok Kumar Sharma v. Chander Shekher*¹⁰⁹ (*Ashok Kumar Sharma case No. 1*). The judgment of the learned Single Judge was upheld by the Division Bench of the High Court. Thereafter, a review application was filed informing the Division Bench of the High Court that the judgment of this Court in *Ashok Kumar Sharma case No. 1*¹⁰⁹ was overruled in *Ashok Kumar Sharma v. Chander Shekhar*¹¹⁰ (*Ashok Kumar Sharma case No. 2*). By holding that on the date of the judgment of the Division Bench, *Ashok Kumar Sharma case No. 1*¹⁰⁹ held the field, the High Court dismissed the review petition. Taking note of the fact that *Ashok Kumar Sharma case No. 2*¹¹⁰ was a judgment of this Court in review of the judgment in *Ashok Kumar Sharma case No. 1*¹⁰⁹, which, therefore, merged with the subsequent judgment, making the later decision the one and only judgment rendered for all purposes, this Court found that the High Court had committed an error in not following the law laid down by this Court in *Ashok Kumar Sharma case No. 2*¹¹⁰. While holding so, this Court referred to the doctrine of prospective overruling and earlier judgments of this Court in *Golak Nath*⁹², *Ashok Kumar Gupta*⁹³ and others. This Court proceeded to observe that there shall be no prospective overruling unless it is so indicated in a particular decision.

58. The facts of the case and the dispute resolved by this Court in *M.A. Murthy*¹⁰⁸ relate to the applicability of the subsequent judgment of *Ashok Kumar Sharma case No. 2*¹¹⁰ rendered in review of an earlier judgment. The question of prospective overruling did not arise in the said case. The observation made in *M.A. Murthy*¹⁰⁸ that there shall be no prospective overruling unless indicated in the particular decision is *obiter*.

59. *Obiter dictum* is defined in *Black's Law Dictionary* (9th Edn., 2009), as follows:

“Obiter dictum.— ... A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive) — Often shortened to dictum or, less commonly, obiter. ...

Strictly speaking an “obiter dictum” is a remark made or opinion expressed by a Judge, in his decision upon a cause, “by the way”—that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the Judge or court merely by way of illustration, argument, analogy, or suggestion.... In the

109 1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857

110 (1997) 4 SCC 18 : 1997 SCC (L&S) 913

92 *Golak Nath v. State of Punjab*, (1967) 2 SCR 762 : AIR 1967 SC 1643

93 *Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299

108 *M.A. Murthy v. State of Karnataka*, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076

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a common speech of lawyers, all such extra-judicial expressions of legal opinion are referred to as “dicta”, or “obiter dicta”, these two terms being used interchangeably.”

60. Wharton’s *Law Lexicon* (14th Edn., 1993) defines the term “obiter dictum” as

b “an opinion not necessary to a judgment; an observation as to the law made by a Judge in the course of a case, but not necessary to its decision, and therefore, of no binding effect; often called as obiter dictum, ‘a remark by the way’ ”.

A decision on a point not necessary for the purpose of or which does not fall for determination in that decision becomes an obiter dictum.¹¹¹

c **61.** It is a well-settled proposition that only the ratio decidendi can act as the binding or authoritative precedent. Reliance placed on mere general observations or casual expressions of the Court, is not of much avail.¹¹² Therefore, the casual and unnecessary observation in *M.A. Murthy*¹⁰⁸ that there shall be no prospective overruling unless it is so indicated in a particular decision is *obiter* and not binding. Moreover, in *M.A. Murthy*¹⁰⁸, this Court failed to consider the ratio of the judgment of this Court in *Ashok Kumar Gupta*⁹³, even after referring to it. As stated above, the prospective overruling of *Rangachari*¹⁰⁴ by *Indra Sawhney*¹ was upheld in *Ashok Kumar Gupta*⁹³.

d **62.** This Court in *Golak Nath*⁹² and *Ashok Kumar Gupta*⁹³, referred to above, has laid down that Article 142 empowers this Court to mould the relief to do complete justice. To conclude this point, the purpose of holding that *M. Nagaraj*³ would have prospective effect is only to avoid chaos and e confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in *M. Nagaraj*³. Most of them would have already retired from service on attaining the age of superannuation. The judgment of *M. Nagaraj*³ was delivered in 2006, interpreting Article 16(4-A) of the f Constitution which came into force in 1995. As making the principles laid down in *M. Nagaraj*³ effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time, it is necessary that the judgment of *M. Nagaraj*³ should be declared to have prospective effect.

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111 *Madhav Rao Jivaji Rao Scindia v. Union of India*, (1971) 1 SCC 85

112 *Girnar Traders v. State of Maharashtra*, (2007) 7 SCC 555

108 *M.A. Murthy v. State of Karnataka*, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076

93 *Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299

104 *Southern Railway v. Rangachari*, (1962) 2 SCR 586 : AIR 1962 SC 36

h 1 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

92 *Golak Nath v. State of Punjab*, (1967) 2 SCR 762 : AIR 1967 SC 1643

3 *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

(6) Quantifiable data and sampling method

63. The Karnataka Legislature enacted the Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2002. This Court declared the provisions of the said Act as unconstitutional on the ground that the Government of Karnataka failed to produce quantifiable data to show any compelling necessity for exercising power under Article 16(4-A) and therefore, Sections 3 and 4 of the said Act were held to be unconstitutional. Thereafter, the Government of Karnataka constituted a committee, headed by the Additional Chief Secretary to the State of Karnataka, and entrusted the following tasks to the committee:

“(1) Collect information in cadre-wise representation of SCs and STs in all the government departments.

(2) Collect information regarding backwardness of SCs and STs.

(3) Study the effect on the administration due to the provision of reservation in promotion to SCs and STs.”

64. On 5-5-2017, the “Report on Backwardness, Inadequacy of Representation and Administrative Efficiency in Karnataka” was submitted by the Ratna Prabha Committee. The Government of Karnataka accepted the Report and the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Bill, 2017 was passed by the Legislative Assembly and the Legislative Council and thereafter, received Presidential assent on 14-6-2018. The grievance of the petitioners therein was that the data was collected only from 31 departments out of a total of 62, based on Groups ‘A’, ‘B’, ‘C’ and ‘D’ and not on cadre. A further complaint was made that no data was collected with respect to public sector undertakings, boards, corporations, local bodies, grant-in-aid institutions and autonomous bodies, and therefore, the data is only representative in nature.

65. This Court in *B.K. Pavitra* (2)⁷⁵ reproduced (at SCC pp. 204-05, para 101) a summary of the Ratna Prabha Committee Report, which is as follows:

“101. ... 2.5. Summary:

(1) The analysis of time series data collected for the last 32 years (1984-2016 except for 1986) across 31 departments of the State Government provides the rich information on the inadequacy of representation of SC and ST employees in various cadres of Karnataka Civil Services.

(2) The total number of sanctioned posts as per the data of 2016 is 7,45,593 of which 70.22% or 5,23,574 are filled up across 31 departments.

(3) The vacancies or posts are filled up through Direct Recruitment (DR) and Promotions including consequential promotion.

⁷⁵ *B.K. Pavitra v. Union of India*, (2019) 16 SCC 129

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a (4) The overall representation of the SC and ST employees of all 31 departments in comparison with total sanctioned posts comprises of 10.65% and 2.92% respectively. This proves inadequacy of representation of SCs and STs.

(5) On an average the representation in Cadre A for SCs is at 12.07% and STs 2.70% which sufficiently proves the inadequacy of representation.

b (6) The extent of representation in Cadre B is on an average of 9.79% and 2.34% for STs for all the years of the study period.

(7) It is observed that on an average 3.05% of SC representation is inadequate in the Cadre 'C' whereas, 0.05% excess representation is seen for STs.

c (8) On an average of 2% and 1% over-representation of employees of SCs and STs is found in Cadre D respectively. However, in the last 5 years, inadequacy of representation of SCs by 3% is found in this cadre.

(9) The representation of Scheduled Caste in Cadres A, B and C is on an average 12, 9.79 and 12.04% respectively whereas in Cadre D it is 16.91.

(10) In case of STs in the Cadres A and B the representation is 2.70 and 2.34%. However, excess representation of 0.04 and 0.93% is found in case of Group C and Group D respectively.

d (11) Over-representation in some years and departments is attributed to either Direct Recruitment or retirement of employees or filling up of backlog vacancies as the latter does not fall under 50% limitation of reservation.

2.6. Conclusion:

e The data clearly shows the inadequacy of representation of SCs and STs in the civil services in Groups A, B and C and adequate representation in Group D."

f 66. This Court in *B.K. Pavitra* (2)⁷⁵ found the challenge to the Report on the ground of data having been collected on the basis of Groups A, B, C and D as opposed to cadres, to be without merit. The basis of the said conclusion of the Court was that there is no fixed meaning ascribed to the term "cadre" in service jurisprudence. Further, this Court held that collection of quantifiable data on the inadequacy of representation is in the services of the State, according to *M. Nagaraj*³. In addition, this Court was also of the view that Article 16(4-A) referred to inadequacy of representation in the *services* of the State. It was further declared that collection of data on the basis of groups does not exclude data pertaining to cadres, as a group includes posts in all the cadres in that group.

g 67. Collection of quantifiable data for determining the inadequacy of representation of SCs and STs is a basic requirement for providing reservation in promotions, as laid down by this Court in *M. Nagaraj*³. The unit for

h ⁷⁵ *B.K. Pavitra v. Union of India*, (2019) 16 SCC 129

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

the purpose of collection of data is a cadre, according to *M. Nagaraj*³ and *Jarnail Singh*⁶. For the purpose of collection of quantifiable data for providing reservation in promotions, the entire service cannot be taken to be a unit and treated as a cadre, as already stated. The structure of services in the State of Karnataka is along the same lines as that of services in the Central Government. Services are divided into “groups”, which are further bifurcated into cadres. There is no confusion that a cadre is not synonymous with a “group”.

68. The first term of reference for the Ratna Prabha Committee was to collect data cadre-wise. The conclusion of this Court in *B.K. Pavitra* (2)⁷⁵ that the expression “cadre” has no fixed meaning in service jurisprudence is contrary to the judgments of this Court, which have been referred to above while answering Point 2. In clear terms, *M. Nagaraj*³ held that the unit for collection of quantifiable data is *cadre*, and not *services* as has been held in *B.K. Pavitra* (2)⁷⁵. Article 16(4-A) of the Constitution enables the State to make reservation in promotions for SCs and STs, which are not adequately represented in the services of the State. However, the provision for reservation in matters of promotion is with reference to *class* or *classes* of posts in the services under the State. That “groups” consist of cadres is a fact which was taken into consideration by this Court in *B.K. Pavitra* (2)⁷⁵. The conclusion that the collection of data on the basis of “groups” is valid, is contrary to the decisions of this Court in *M. Nagaraj*³ and *Jarnail Singh*⁶.

69. The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a “group”, which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a “group”, is the unit and the data has to be collected with respect to each cadre. Therefore, we hold that the conclusion of this Court in *B.K. Pavitra* (2)⁷⁵ approving the collection of data on the basis of “groups” and not cadres is contrary to the law laid down by this Court in *M. Nagaraj*³ and *Jarnail Singh*⁶.

70. It is made clear that we have not expressed any opinion on the merits of any individual case as we have only answered the common issues that were formulated after hearing the parties.

71. List the matters on 24-2-2022 for further hearing.

³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013

⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86

⁷⁵ *B.K. Pavitra v. Union of India*, (2019) 16 SCC 129