

Baljit Singh Chauhan *v.* State of Haryana and others  
(I. S. Tiwana, J.)

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(5) In view of what has been stated above, the Municipal Corporation, Ludhiana, respondent, cannot put any condition on the petitioners and cannot prohibit them from raising one storey more on the buildings of which they are owners. The building applications submitted by the petitioner be considered and disposed of in the light of the observations made above. This petition is allowed in the terms stated above. No order as to costs.

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R. N. R.

Before I. S. Tiwana and M. R. Agnihotri, JJ.

BALJIT SINGH CHAUHAN,—*Petitioner.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 4787 of 1985*

December 2, 1988.

*Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Service Rules, 1981—Rl. 9(3)—Haryana Government instructions of February 9, 1979—Promotion criterion provided under service Rules—Seniority cum fitness basis for promotion—Government instructions not giving benefit of reservation in such promotions—Deletion of instructions with immediate effect—Such deletion whether retrospective.*

*Held*, that there is no conflict between any provisions of the Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Service Rules, 1981 or the instructions in question. Further, even if some weight is to be given to this submission of the learned counsel for argument's sake i.e. Rule 9(3) is to be ignored, still the petitioners cannot claim promotions to the posts in question in the face of paragraph (6) of the 1979 instructions as it forms an integral part of those instructions and lays down that when the promotions are to be made on the basis of seniority-cum-fitness the said posts cannot be treated as reserved. This paragraph (6) cannot possibly be ignored. Apparently paragraph (6) of the instructions has been deleted with immediate effect, i.e. with effect from August 11, 1988 and has no retrospective effect.

(Para 2)

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble High Court may be pleased :—*

- (i) to summon for the entire record of the case and after persuing the same to :—
- (a) issue a writ in the nature of Certiorari quashing the impugned order at Annexure P-2 as the entire promotion orders have been issued without considering the genuine and due claim of the petitioner on reserved point even when he was due to be considered for such promotion as is alleged,—vide Annexure P-1. The impugned order at Annexure P-2 is liable to be quashed in toto as no reservation has been given without considering the claim of any Scheduled Caste employees.
- (b) issue a writ in the nature of Mandamus directing Respondents 1 and 2 to consider the genuine and due claim of the petitioner on reserved point and promote the petitioner to the post of Assistant/Accountant/Junior Auditor from the date, the other officials are due for promotion in accordance with the procedure of the Roster;
- (ii) to direct Respondents No. 1 to 11 not to implement the impugned order at Annexure P-2 till the decision of the present writ petition restraining respondents No. 12 to 30 to join their new assignment;
- (iii) to dispense with the requirement of serving advance notices upon the respondents as there is no time left with the petitioner for such requirement;
- (iv) to dispense with the requirement of filing of certified copy of Annexure P-1 and P-2;
- (v) to issue any other suitable writ, order or directions which this Hon'ble Court may deem fit in the circumstances of the case;
- (vi) to allow this writ petition of the petitioners with costs.

P. S. Chauhan, Advocate, for the Petitioner.

B. S. Malik, Addl. A.G., Haryana, for Respondent Nos. 1 to 11

Subhash Ahuja, Advocate, for Respondent Nos. 18 and 23.

Ramanjit Singh, Advocate and Mahesh Grover, Advocates, for Respondents Nos. 14, 20, 24, 27 and 30.

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JUDGMENT

*I. S. Tiwana, J.*

(1) In these six civil writ petitions Nos. 4787 of 1985 and 217, 348, 349, 3918 and 6048 of 1986, the petitioners either clamour for the enforcement of the instructions of the Haryana Government dated February 9, 1979 (hereinafter referred to as the 1979 instructions) making reservation of posts in favour of Scheduled Castes/ Backward Classes and Ex-servicemen or impugn the action of the authorities in withdrawing the benefit of those instructions when the petitioners were granted out of turn promotions. Thus the precise common point involved in all these petitions relates to the interpretation and scope of the above noted instructions. The relevant parts of these read as follows :—

“In supersession of Haryana Government instructions issued,—  
*vide* letter No. 2812-2GS-1-76/11578, dated the 5th May, 1976, letter No. 5074-2GSI-76/21898, dated the 17th August, 1976, and subsequent letter No. 38/48/78-GSI, dated the 14th September, 1978 on the subject noted above, I am directed to say that the State Government has further reviewed on the existing policy of reservation of posts for Scheduled Castes, Backward Classes and Ex-servicemen in the services of Haryana and have decided as follows :—

(1) (i) The quantum of reservation will be as under :—

*By direct recruitment*

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|---------------------------|--|
| (a) For Scheduled Castes. | 20 per cent (in Classes I, II, III and IV posts).  |
| (b) For Backward Classes. | 5 per cent (in Classes I, II, III and IV posts).   |
| (c) For Ex-servicemen.    | (i) 5 per cent (in Class I & II posts).<br><br>(ii) 25 per cent (in Class III and IV posts). |

*“By Promotion*

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|---------------------------|--|
| (a) For Scheduled Castes. | 20 per cent (in class III and IV posts) on the basis of seniority/cum-merit. There will be no reservation in Class I and II posts. |
| (b) For Backward Classes. | 5 per cent (in class III and IV posts) on the basis of seniority/cum-merit. There will be no reservation in Class I & II posts).   |
| (c) For Ex-servicemen.    | Nil  |

(ii) Henceforth, in a block of 100 posts in each cadre, the following posts should be reserved for persons belonging to Scheduled Castes and Backward Classes and for Ex-servicemen :—

- (6) In the case of posts to be filled up by way of promotion the benefit of reservation should be given where the basis of promotion is seniority-cum-merit and the benefit of reservation should not be made available where promotion is to be given on the basis of seniority-cum-fitness.”

The case of the petitioners in a nutshell is that the State Government is bound to give effect to these instructions by promoting the petitioners in the light of the roster referred to above or retaining them at the promoted posts as per the roster point or post which were treated as reserved for them. The common stand of the respondent authorities in these cases is that a combined reading of paragraph (6) of these instructions as reproduced above, with Rule 9(3) of the Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Service Rules, 1981 did need not entitle these petitioners to any such reservation as the basis for promotion to the posts in question was seniority-cum-fitness. The above noted rule which concededly governs the service of the petitioners, reads as follows :—

“9(3) All promotions, whether from one grade to another grade or from one group of Service to another group of Service,

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shall be made on seniority-cum-fitness basis and taking into consideration seniority but seniority alone shall not give any right to such promotions.”

It is further the stand of these authorities that some of the petitioners were wrongly granted promotions subsequent to the enforcement of these rules on July 7, 1981 by ignoring this rule. Now the said mistake has either been remedied by ordering the reversion of the petitioners concerned or is sought to be remedied. It deserves to be noticed at this stage that as per the latest instructions issued by the State of Haryana on August 11, 1988, the above noted paragraph (6) of the 1979 instructions has been deleted with “immediate effect”. The question then is whether the petitioners can derive any benefit from the latest instructions dated August 11, 1988. Apparently paragraph (6) of the instructions in question has been deleted with immediate effect, i.e., with effect from August 11, 1988, and has no retrospective effect. This change of policy does not govern the vacancies arising prior to that date. Therefore, the petitioners whose reversions have been ordered or are sought to be ordered on the ground that they were given wrongful promotions in the light of the 1979 instructions cannot derive benefit from the instructions dated August 11, 1988. What is sought to be highlighted on their behalf to sustain their promotions is that firstly, the 1979 instructions having been issued in exercise of the constitutional authority [Article 16(4) read with Articles 46 and 335 of the Constitution], the rules framed under Article 309 of the Constitution must give way to these instructions. As per the learned counsel this is so for the reason that the rules framed under Article 309 are “subject to the provisions of this Constitution” meaning thereby that the rules framed under this Article of the Constitution cannot override the instructions issued under other Articles or provisions of the Constitution in case of their *inter se* conflict. Secondly, it is the stand of the learned counsel for the petitioners that the instructions in question are not only contradictory, i.e., paragraph (6) as noticed above nullifying the effect of paragraph (1), but are also discriminatory *inter se* the members of the service, i.e., where promotion is to be ordered on the basis of seniority-cum-merit the benefit of reservation has to be given to the members of the service but it has to be denied when the said promotion is to be made on the basis of seniority-cum-fitness. Having given our thoughtful consideration to the entire matter, in the light of these submissions, we, however, find no weight in these.

(2) The first submission of the learned counsel for the petitioners though seems to be plausible yet has no merit in view of the fact that we see no conflict between the 1979 instructions and 1981 rules as referred to above. Rule 9(3) does not at all refer to any reservation policy of the State Government. Rather Rule 19 of these Rules specifically saves the effect of reservation ordered by the Government in exercise of its power under Clause (4) of Article 16 of the Constitution. It reads thus :—

“19. Nothing contained in these rules shall effect reservations and other concessions required to be provided for Scheduled Castes and other Backward Classes in accordance with orders issued by the State Government in this regard from time to time, under clause (4) of Article 16 of the Constitution.”

There is no provision in these rules debarring the Government to make any reservation of posts for the members of the Scheduled Castes/Tribes and Ex-servicemen. Therefore, there is no conflict between any provision of the rules or the instructions in question. Further, even if some weight is to be given to this submission of the learned counsel for argument's sake, i.e., Rule 9(3) is to be ignored, still the petitioners cannot claim promotions to the posts in question in the face of paragraph (6) of the 1979 instructions as it forms an integral part of those instructions and lays down that when the promotions are to be made on the basis of seniority-cum-fitness the said posts cannot be treated as reserved. This paragraph (6) cannot possibly be ignored. Sub-rule (2) of Rule 9 of the 1981 Rules lays down that except as otherwise provided, when any vacancy occurs or is about to occur in the Service, the appointing authority shall determine in what manner such vacancy shall be filled in. This sub-rule entitles the authority to lay down the manner in which the vacancy is to be filled in and the moment the said authority decides that the vacancy has to be filled on the basis of seniority-cum-fitness, paragraph (6) of the instructions comes into full play and disentitles the members of the Scheduled Castes/Backward Classes and Ex-servicemen to be promoted in the light of the said instructions.

(3) It is then obliquely suggested by the learned counsel that in view of the provisions of Rule 17 empowering the State Government to relax any rule while ordering promotion of a member of the Service, Rule 9(3) should be deemed to have been so relaxed when

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promotions of some of the petitioners were ordered after the enforcement of these rules. The submission appears to be equally futile for the reasons that (i) the relaxation as per this rule can only be granted with respect to "any class or category of persons" and not individuals and (ii) no such relaxation had as a matter of fact been granted at the time of the respective promotions of the petitioners concerned.

(4) So far as the second submission of the learned counsel for the petitioners as noticed above is concerned, we find that paragraph (6) of the instructions as reproduced above is in the form of an exception to paragraph (1) which lays down the mode of appointment and extent of reservation made in favour of the members of the Scheduled Castes/Tribes and Ex-servicemen. Though as per the first paragraph, the reservations are available to the members of these classes, yet no benefit of these reservations is to be given in the case of promotions which are to be ordered on seniority-cum-fitness basis. So there is no contradiction in the two paragraphs.

(5) So far as the question of discrimination is concerned, the argument deserves to be rejected in the light of the following observations made by their Lordships of the Supreme Court in *C.A. Rajondran v. Union of India and others* (1), while examining a similar contention :—

"It was also contended by Mr. N. C. Chatterjee that the impugned order, Annexure 'C' arbitrarily discriminates among Class III employees themselves and Class IV employees themselves. Under the impugned order reservation is kept for appointments for which there is direct recruitment and for promotion made by (1) selection, or (2) on the result of a competitive examination limited to departmental candidates. There is no reservation for appointments made by promotion on the basis of seniority-cum-fitness. In our opinion, there is no justification for this argument as it is well-established that there can be a reasonable classification of employees for the purpose of appointment by promotion and the classification as between direct recruits and promotees is reasonable. (See

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(1) 1968 S.L.R. 65.

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the decisions of this Court in *Mervyn Continho and others v. The Collector of Customs, Bombay* and in *S. C. Jaisinghani vs. Union of India*.”

(6) Thus examined from any angle, the claim of the petitioners is meritless and deserves to be declined. We, therefore, dismiss these petitions but with no order as to costs.

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S. C. K.

Before J. V. Gupta, J.

DARSHAN KUMAR,—Petitioner

versus

RANBIR GUPTA AND ANOTHER.—Respondents.

Civil Revision No. 1215 of 1988 and

C.M. No. 152-CII of 1989

February 3, 1989.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Application for eviction of tenant—Eviction sought on the ground of ceasing to occupy the premises for a period of more than four months—Particulars of that period not disclosed in the application—Effect of non disclosure—Tenant of unsound mind—Effect of—stated.*

*Held*, that even if it be assumed that the shop remained closed for some period, it could not be successfully argued that the tenant ceased to occupy the same without any sufficient cause. Of course, the case set up by the wife was that she was occupying the shop, in dispute, with her husband till he disappeared on August 6, 1980, in a state of unsoundness of his mind and that she was still carrying on business, after he had left, in the demised premises, but that will not make any difference because in the facts and circumstances of this case, it is amply proved that the tenant was not of sound mind. That being so it, becomes relevant that the landlords should have mentioned the particular period for which the tenant ceased to occupy the premises so that it could be shown that the tenant had failed to occupy the same for a sufficient cause for a particular period. (Para 8).