

Inderjit Chaudhry, Excise Inspector, Gobindgarh v. The State of Punjab, through Secretary to Government, Punjab, etc. (Jain, J.)

commencement of this Constitution subject to their personal law" relates to the matters covered by the earlier part of the entry. The expression "personal law" used in entry 5 of List III is not synonymous with all kinds of laws including Customary Law. For all these reasons I hold that the amending Act does not deal with any subject in respect of any matter covered by entry 5 of the Concurrent List, and is, therefore, not *ultra vires* Article 254(1) of the Constitution, and did not require to be reserved by the Punjab Legislature for the consideration of the President and is not dependent for its validity on receiving the President's assent within the meaning and purview of clause (2) of Article 254 of the Constitution.

No other point having been argued by the counsel for the parties, this appeal must, for the reasons already recorded, succeed. I accordingly allow it, reverse the decree of the learned Senior Subordinate Judge, Ferozepore, dated May 19, 1964, and substitute for the same the decree of the trial Court, dated November 20, 1963, dismissing the suit of the plaintiff-respondents. The parties are, however, left to bear their own costs throughout.

B.S.G.

Before S. S. Sandhawalia and P. C. Jain, JJ.

INDERJIT CHAUDHRY, EXCISE INSPECTOR, GOBINDGARH.—
Petitioner.

versus

THE STATE OF PUNJAB, THROUGH SECRETARY TO
GOVERNMENT, PUNJAB, ETC.—*Respondents.*

Civil Writ No. 1223 of 1972

March 18, 1975.

Constitution of India (1950)—Article 16(4)—Government declaring a community as backward class—Directions making reservation for members of Backward Classes for promotion to higher posts—Subsequent instructions laying down guidelines for classification of people as Backward Classes—Whether applicable to persons already declared backward—Such persons—Whether entitled to benefit of reservation for promotion to higher posts.

Held, that the Government instructions regarding the classification of people of the State as Backward on the basis of their economic backwardness, social status of occupation etc. embody only additional guidelines for declaring a class of persons as backward who may satisfy the conditions mentioned therein but do not apply to those classes which had already been declared backward.

(Para 10).

Held, that the reservation contemplated by Article 16(4) of the Constitution of India 1950, can be made not merely at the time of initial recruitment, but also to posts to which promotions are to be made. A person belonging to a community already declared to be a Backward class is, therefore, entitled to the benefit of reservation for promotion to higher posts and the subsequent conditions for classification of Backward classes in no way adversely affect his right to promotion.

(Paras 11 and 13).

Case referred by Hon'ble Mr. Justice M. R. Sharma on November 21, 1973, to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain, finally decided the case on 18th March, 1975.

Petition under Articles 226/227 of the Constitution of India, praying that —

- (i) a writ in the nature of certiorari quashing the order Annexure 'F' by which the respondents have refused to promote the petitioner on a reserved vacancy as Backward Class candidate, be issued;
- (ii) a writ in the nature of mandamus directing respondents to consider and promote the petitioner to the post of Assistant Excise and Taxation Officer in the 15th Vacancy which fell vacant after the appointment of the petitioner as an Excise Sub-Inspector, be issued;
- (iii) any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued;
- (iv) the records of the petition be ordered to be sent for;
- (v) the cost of the petition be awarded to the petitioner.

Kuldip Singh, Advocate with Mr. R. S. Mongia, Advocate, for the petitioner.

D. N. Rampal, Assistant Advocate-General, Punjab, for the respondents.

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JUDGMENT

JAIN, J.—(1) The short question that requires determination in the instant case is whether Inderjit Chaudhary, petitioner, a member of the Backward Class, who is working as Excise Inspector and whose income exceeds Rs. 1,800 per annum, is entitled to the benefit of reservation mentioned for Backward Classes for promotion to the higher post.

(2) The facts on which there is no dispute are that the petitioner belongs to 'chang' caste which has been declared a Backward Class by a notification of the Punjab Government, dated 9th/23rd December, 1959, (copy annexure 'A' to the petition), that the petitioner joined service of the Punjab Government as Excise Sub-Inspector in December, 1959, and was confirmed by an order, dated 16th November, 1966, with effect from 7th June, 1962, that by notification, dated 12th September, 1963, Punjab Government issued directions under Article 16(4) of the Constitution of India making reservation in service for the members of the Scheduled Castes/Scheduled Tribes and Backward classes for promotion, that by subsequent instructions, dated 23rd August, 1966, the percentage of the reservation was increased, that on the basis of the instructions contained in circular letter No. 2662-5WG11-63/6934, dated 20th April, 1963 (copy annexure 'G' to the petition), the petitioner was not considered for promotion to the post of Assistant Excise and Taxation Officer on the ground that he was drawing salary which exceeded Rs. 1,800 per annum and hence was not entitled to the privileges which were being enjoyed by the Backward Classes and that the petitioner filed a representation but the same was rejected. Feeling aggrieved from the action of the Government, the petitioner filed the present writ petition which came up for hearing before M. R. Sharma, J. The learned Judge found that the point involved in the petition was of considerable importance and accordingly directed that the same be decided by a larger Bench. That is how this petition has been placed for hearing before us.

(3) It was contended by Mr. Kuldip Singh, learned counsel for the petitioner, that the petitioner was entitled to the benefit of reservation for promotion to the higher post and that the instructions contained in circular letter, dated 20th April, 1963 (copy Annexure

'G') had no applicability and did not in any way debar the petitioner from claiming the benefit of reservation for promotion. According to the learned counsel, the circular letter (copy Annexure 'G') only lays down certain guidelines for classification of certain classes of people as Backward Classes and does not in any way nullify the effect of the earlier letter, dated 9th/23rd December, 1959 (copy annexure 'A') by which 'chang' community had been declared to be a Backward Class.

(4) On the other hand it was contended by Mr. D. N. Rampal, learned Assistant Advocate-General (Punjab), that the object underlying circular letter, copy Annexure 'G', is quite evident inasmuch as the Government intended to include only those persons in the category of Backward Classes who would satisfy the conditions mentioned therein and that the petitioner was rightly refused the benefit of reservation for purposes of promotion to the higher posts.

(5) After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of Mr. Kuldip Singh, learned counsel for the petitioner.

(6) At this stage it would be appropriate to reproduce the relevant contents of the circular letter, which read as under:—

“Subject: Classification of certain classes of people as Backward Classes other than the Scheduled Castes and Scheduled Tribes.

I am directed to address you on the subject noted above and to say that the question of classification of the people of the State as Backward on the basis of their economic backwardness, social status of occupation, etc., other than castes had been engaging the attention of the Government for some time past. After careful consideration it has now been decided that:—

Besides the Scheduled Castes and Scheduled Tribes who were separately enjoying certain privileges the other Backward Classes may include:—

- (a) all the residents of Punjab State, whose family income is less than Rs. 1,800 per annum irrespective of the fact as to which caste, community or class they belong to and what profession they are following.

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(b) Besides the above category certain other communities should also be declared as Backward by the State Government. These communities should be such as are socially looked down upon by the people of State. All the members belonging to these backward communities excluding those whose family income exceeded Rs. 1,800 per annum should be entitled to privileges being enjoyed by Backward Classes."

(7) A bare reading of the contents, reproduced above, shows that the conditions mentioned therein would not apply to those classes which had already been declared as backward and that by laying down these conditions an additional guideline has been provided entitling those persons who satisfy these conditions, to take benefit of the privileges which are being enjoyed by those classes which had already been declared backward. Further these conditions are applicable at the initial stage of classification and declaration and are not intended to be made applicable to cases where benefit of reservation for promotion is being claimed.

(8) It is a well settled principle of law that reservation contemplated by Article 16(4) of the Constitution of India, can be made not merely at the time of initial recruitment, but also to posts to which promotions are to be made. See in this connection the following observations of Gajendragadkar, J., (as he then was), speaking for the majority, in *The General Manager, Southern Railway v. Rangachari* (1):—

"We must in this connection consider an alternative argument that the word 'posts' must refer not to selection posts but to posts filled by initial appointments. On this argument reservation of appointments means reservation of certain percentage in the initial appointments and reservation of posts means reservation of initial posts which may be adopted in order to expedite and make more effective the reservation of appointments themselves. On this construction the use of the word 'posts' appears to be wholly redundant. In our opinion, having regard to the fact that we are construing the relevant expression, 'reservation of appointments' in a constitutional provision

(1) (1962) 2 S.C.R. 586.

it would be unreasonable to assume that the reservation of appointments would not include both the methods of reservation, namely, reservation of appointments by fixing a certain percentage in that behalf as well as reservation of certain initial posts in order to make the reservation of appointments more effective. That being so, this alternative argument which confines the word 'posts' to initial posts seems to us to be entirely unreasonable. On the other hand under the construction by which the word 'posts' includes selection posts the use of the word 'posts' is not superfluous but serves a very important purpose. It shows that reservation can be made not only in regard to appointments which are initial appointments but also in regard to selection posts which may fall to be filled by employees after their employment. This construction has the merit of interpreting the word 'appointments' and 'posts' in their broad and liberal sense and giving effect to the policy which is obviously the basis of the provisions of Article 16(4). Therefore, we are disposed to take the view that the power of reservation which is conferred on the State under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection posts. This construction, in our opinion, would serve to give effect to the intention of the Constitution makers to make adequate safeguard for the advancement of backward classes and to secure for their adequate representation in the services."

(9) There is no dispute that for purposes of initial entry into service, 20 per cent of the posts have been reserved for persons belonging to the Scheduled Castes/Scheduled Tribes and 2 per cent of such posts have been reserved for members of the Backward Classes. So far as reservation of posts to which promotions have to be made is concerned, the petitioner has placed on record documents in the shape of Annexures 'B' and 'C' showing that reservation has been made to such posts for the members of Scheduled Castes/Scheduled Tribes and Backward Classes also.

(10) During the course of arguments circular letter No 1494-SW1-74/8105, dated 4th May, 1974, was also brought to our notice showing that except the All India Services, even reservation was

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made in case of promotion to Class I and Class II services, for Scheduled Castes/Scheduled Tribes and Backward Classes. If the contention of Mr. D. N. Rampal is accepted, then it would result in nullifying the decision of the Government by which reservation for the members of the Backward Classes has been made to posts to be filled by promotion, e.g., with the present pay, even a Clerk's income admittedly is more than Rs. 1,800 per annum and if it is held that conditions laid down in annexure 'G' are applicable, then a person belonging to a Backward Class would not be ever entitled to promotion to a higher post on the basis of reservation with the result that in the case of Backward Classes, the object of giving benefit of reservation for promotion would be completely frustrated and nullified. This, to my mind, could never be the intention of the Government while issuing the instructions contained in the circular letter, copy Annexure 'G' to the petition. As earlier observed, this circular letter embodies an additional guideline for declaring a class of persons as backward who may satisfy those conditions. In this view of the matter, I find that the petitioner is entitled to the benefit of reservation for promotion to the higher posts and the conditions mentioned in the circular letter, copy Annexure 'G', in no way adversely affect his right to promotion.

(11) No other point was urged.

(12) For the reasons recorded above, I allow this writ petition with costs, quash the order of the Excise and Taxation Commissioner, Punjab, dated 22nd July, 1970, copy annexure 'F', and direct the authorities to consider the case of the petitioner for promotion in the light of the observations made above.

S. S. Sandhawalia, J.—I agree.

N. K. S.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and Prem Chand Jain, JJ.

DR. MRS. PERMINDER KAUR,—Petitioner.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 4659 of 1974.

March 19, 1975.

Constitution of India (1950)—Article 16(1)—Executive Instructions providing for treating the first vacancy in a lot of hundred