

V. B. Singh v. The State of Punjab and others (Gujral, J.)

to be exercised as a member of the society so that a similar right of the other members of the society is not violated. We, therefore, do not find any merit in the submission of the learned counsel that by prohibiting the appellants from holding the *dewan* on the particular days of Bawan Dwadshi fair in any way violates the fundamental rights of the appellants guaranteed under Articles 19 and 25 of the Constitution.

(8) For the reasons given above, we find no merit in this petition which is dismissed with costs.

Pattar, J.—I agree.

B. S. G.

Before M. S. Gujral and R. N. Mittal, JJ.

V. B. SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

• C.W. 2292 of 1968.

October 16, 1974.

Constitution of India 1950—Articles 16(2) and (4), 341 and 366(24)—Constitution (Scheduled Castes) Order (1950)—Declaration of Scheduled Castes under Article 341—Whether has relation only to the particular State or Union Territory for which the declaration is made—Member of a Caste declared to be a Scheduled Caste in one State and residing therein—Whether can be considered as belonging to the Scheduled Caste of another State—Reservation of appointments for backward class of citizens in relation to a particular State—Whether violative of Article 16(2).

Held, that the definition of the “Scheduled Castes” has reference only to those castes, races or tribes as are mentioned to be Scheduled Castes under Article 341 of the Constitution of India. Under this Article the President has to specify by public notification castes, races or tribes or parts of or groups within castes, races or tribes which are to be deemed to be Scheduled Castes in relation to any State or Union Territory. The declaration has to be made in respect of a particular State or Union Territory, and where it is a State after consultation with the Governor thereof. From the use of the expressions “with respect to any State or Union Territory” and “in relation to that State or Union Territory” in Article 341(1) it is clear that the declaration of Scheduled Castes has relation only to that particular State or Union Territory for which the

declaration is made and not for other States or Union Territories. Under the Constitution (Scheduled Castes) Order, 1950 also the declaration of castes, races or tribes as Scheduled Castes are applicable only to those members who were residents of the localities in respect of which these castes, races and tribes have been declared to be Scheduled Castes. Hence a member of a Caste declared to be Scheduled Caste in one State and residing therein cannot be considered as belonging to Scheduled Caste of another State.

Held, that Article 16(1) and (2) of the Constitution provides that all citizens shall be equally treated in the matter of employment or appointment to any Office under the State and that no citizen shall be discriminated against in the matter of any employment or office under the State on the basis of race, religion, residence or place of birth, etc. In spite of this prohibition, in view of Article 16(4) the State can make provision for reservation of appointments or posts in favour of any backward class of citizen which is not adequately represented in the services under the State and such a provision would be valid even if it is violative of Article 16(1) and (2). The prohibition imposed by Article 16(2) does not govern Article 16(4), and even if a provision made by a State Government regarding reservation of appointments or posts in favour of any backward class of citizens is discriminatory on the basis of place of birth or residence, this provision is valid. Hence any reservation of appointments made in favour of castes, races or tribes or parts of or groups within castes, races or tribes specified in the Schedule to the Scheduled Castes Order in relation to any particular State is not violative of Article 16(2). Such a provision is protected by article 16(4) even if it be discriminatory on the basis of place of birth or residence.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia on 2nd January, 1973 to a Larger Bench for decision of important questions of law involved in the case. The case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice Rajendra Nath Mittal on 16th October, 1974.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari, Mandamus, qu-warranto or any other appropriate writ order or direction be issued directing the respondents to appoint the petitioner as an Officer in the Punjab Civil Service (Judicial Branch) with effect from the date respondent Nos. 5 and 6 were appointed.

Mr. J. L. Gupta, Advocate and Mr. Karminder Singh, Advocate, for the petitioners.

Mr. D. N. Rampal, Advocate, for respondents 1 to 3.

V. B. Singh v. The State of Punjab and others (Gujral, J.)

JUDGMENT

(1) For recruitment to the Punjab Civil Service (Judicial Branch) an examination was held by the Punjab Public Service Commission, Patiala. The result of the examination was declared in the Punjab Government Gazette Notification dated 3rd May, 1965. Mr. V. B. Singh, who is the petitioner in this case, was placed at serial No. 331 while respondents Nos. 5 and 6, Shri P. C. Nariala and Baghair Singh Teji, were placed at serial Nos. 333 and 358, respectively. Considering himself to be a Scheduled Caste candidate the petitioner expected to be appointed as he was eighth in the order of merit considering Scheduled Caste candidates. As however, respondents Nos. 5 and 6 were subsequently appointed though they had obtained less marks than the petitioner he submitted a representation to the Chief Secretary to Government, Punjab, and other concerned authorities but did not get any relief. He has now approached this Court through the present writ petition under Articles 226 and 227 of the Constitution of India, seeking a direction to the Government to appoint him and for other consequential reliefs. This petition originally came up before a learned Single Bench, but considering that there was no direct authority bearing on the point and the point involved was of considerable significance, the case was referred to a larger Bench and it is in this manner that the petition has now come to be placed before us.

(2) The petition is contested through the affidavits of Shri Iqbal Singh, Under Secretary to Government, Punjab, Shri Pritam Singh, Secretary, Punjab Public Service Commission, and Shri P. C. Nariala, Sub-Judge-cum-Judicial Magistrate, Sirsa. The position taken by the contesting respondents is that the petitioner being a Scheduled Caste candidate belonging to the State of U.P. could not be considered to be a member of the Scheduled Caste belonging to Punjab and was consequently not entitled to a seat reserved for the Scheduled Caste candidates.

(3) On behalf of the petitioner it is contended by Mr. J. L. Gupta that the relevant instructions did not impose this restriction that only the Scheduled Castes of Punjab could be eligible for the posts reserved for Scheduled Castes and that in any case if any such qualification is introduced it would be violative of Article 16(2) of the Constitution of India and would consequently be inoperative.

(4) In order to appreciate the merits of the respective contentions, reference would have to be made to Articles 16(2), 16(4), 341 and 366 (24) of the Constitution of India and the relevant provisions of the Constitution (Scheduled Castes) Order, 1950. These provisions are set down below :

The Constitution of India

"16. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

341. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

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

366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(24) "Scheduled Castes" means such castes, race or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution.

V. B. Singh v. The State of Punjab and others (Gujral, J.)

The Constitution (Scheduled Castes) Order, 1950.

2. Subject to the provisions of this Order, the castes, races or tribes or parts of or groups within, castes or tribes specified in Parts I to XIII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule."

The definition of the expression "Scheduled Castes" has reference only to those castes, races or tribes as are mentioned to be Scheduled Castes under Article 341 of the Constitution of India. Under this Article the President has to specify by public notification castes, races or tribes or parts of or groups within castes, races or tribes which are to be deemed to be Scheduled Castes in relation to any State or Union territory. The declaration has to be made in respect of a particular State or Union territory, and where it is a State after consultation with the Governor thereof. From the use of the expressions "with respect to any State or Union territory" and "in relation to that State or Union territory" in Article 341(1) it is clear that the declaration of Scheduled Castes has relation only to that particular State or Union territory for which the declaration is made and not for other States or Union territories. The matter is further clarified in the Constitution (Scheduled Castes) Order, 1950 (hereinafter called the Scheduled Castes Order). In parts I to XIII of the Schedule to the Scheduled Castes Order the castes, races or tribes or parts of or groups within castes, races or tribes are specified in relation to different States and order 2 of the Scheduled Castes Order provides that this declaration is made in relation to the States to which these parts respectively relate. It is further provided that the castes, races or tribes specified would be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them. In other words, the declaration of castes, races or tribes as Scheduled Castes would be applicable only to those members who were residents of the localities in respect of which these castes, races and tribes have been declared to be Scheduled Castes. The provisions of the Scheduled Castes Order, therefore, clearly negatives the contention raised on behalf of the petitioner that a member of a caste declared to be a Scheduled Caste for U.P. and residing in that territory would also be considered a Scheduled Caste for Punjab or any other State. In coming to this conclusion I am supported

by the following observations made in *K. Appa Rao v. Director of Posts & Telegraphs, Orissa and others* (1) :

“The phrase “in relation to that State” occurring after the words “Scheduled Castes” in Article 341(1) and the phrase “in relation to that State” occurring after the words “Scheduled Tribes” in Article 342(1) are significant in that it shows that in order to get the benefit of being a member of a Scheduled Caste or Scheduled Tribe in the matter of public employment the person claiming it should be a member of such caste or tribe in relation to the particular area or State where he is residing and where he seeks employment. Section 2 of the Public Employment (Requirement as to Residence) Act, 1957, cannot override the provisions of the Constitution. Paragraph 2 of the Constitution (Scheduled Tribes) Order, 1950, supports the above view since it provides that the tribes or tribal communities specified in Parts I to XII of the Schedule to that Order shall “in relation to the States” to which those parts respectively relate be deemed to be the Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule. It is, therefore, clear that the particular Scheduled Tribes specified in the various Parts of the Schedule to that Order are recognised as Scheduled Tribes only for the particular area included in those Parts of the Schedule and not anywhere else. So, any reference to the Scheduled Tribes or Scheduled Castes must be intended to be relatable to the Scheduled Tribes or Scheduled Castes in relation to the particular area or State as appearing in the Schedule to that Order.

The petitioner, a person belonging to Konda Kapur, a Scheduled Tribe recognised in Andhra Pradesh was a permanent resident of Orissa. The said tribe was not recognised as a Scheduled Tribe in the State of Orissa. Held, that while residing in the State of Orissa, the petitioner could not claim the benefit of his being a member of a Scheduled Tribe in the State of Andhra Pradesh for the purpose of public employment in Orissa.”

(1) A.I.R. 1969 Orissa 220.

V. B. Singh v. The State of Punjab and others (Gujral, J.)

(5) The second part of the argument is equally without merit. Article 16(1) and (2) of the Constitution of India provide that all citizens shall be equally treated in the matter of employment or appointment to any office under the State and that no citizen shall be discriminated against in the matter of any employment or office under the State on the basis of race, religion, residence or place of birth, etc. In spite of this prohibition, in view of Article 16(4), the State can make provision for reservation of appointments or posts in favour of any backward class of citizen which is not adequately represented in the services under the State and such a provision would be valid even if it is violative of Article 16(1) and (2). In other words, the prohibition imposed by Article 16(2) would not govern Article 16(4), and even if the provision made by the State Government regarding reservation of appointments or posts in favour of any backward class of citizens is discriminatory on the basis of place of birth or residence, this provision would be valid. Viewed in this context, it is not open to contend that any reservation of appointments made in favour of castes, races or tribes or parts of or groups within castes, races or tribes specified in the Schedule to the Scheduled Castes Order in relation to any particular State was violative of Article 16(2). Such a provision would be protected by Article 16(4) even if it be discriminatory on the basis of place of birth or residence.

(6) Faced with this interpretation of Article 16(2) and 16(4) of the Constitution, it was contended on behalf of the petitioner that declaration of Scheduled Castes and Tribes under Article 341 and the Scheduled Castes Order on the basis of residence of the members of a tribe or caste in a particular State was violative of Article 16(2) in so far as it discriminates against members of Scheduled Castes and Tribes residing in other States. The precise argument is that discrimination between a person belonging to Scheduled Castes or Tribes and one who does not belong to Scheduled Castes or Tribes may be permissible in view of Article 16(4), but no discrimination between members of Scheduled Castes and Tribes can be made on the basis of the place of birth or residence. The argument as advanced is based on complete misconception of the meaning and scope of Article 341 and the Scheduled Castes Order. A member of a caste which has not been declared to be Scheduled Caste in the Schedule to the Scheduled Castes Order of the State where he resides is not a Scheduled Caste in another State even if that caste or tribe is a Scheduled Caste for that

State in the Scheduled Castes Order. There is consequently no discrimination between members of Scheduled Castes on the basis of residence.

(7) For the foregoing reasons, I find no merit in this petition and dismiss the same, but the parties are left to bear their own costs.

Mittal, J.—I agree.

N. K. S.

Before B. R. Tuli and A. S. Bains JJ.

SHRI GOVERDHAN DASS AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

C. W. No. 2692 of 1967

November 5, 1974

The Punjab Municipal Act (III of 1911)—Section 192—Punjab Town Improvement Act (IV of 1922)—Sections 24 and 28—Town planning scheme prepared by Municipal Committee under section 192 of Municipal Act and sanctioned by the State Government—Improvement Trust also preparing a “Development Scheme” under section 24, Improvement Act, for the same area—“Development Scheme”—Whether has precedence over the “Planning” Scheme.

Held, that the object of the Punjab Town Improvement Act, 1922 is essentially to improve and expand the towns in the State and for that purpose schemes have to be framed for big localities. The provisions of the Improvement Act therefore will over-ride the provisions of the Punjab Municipal Act, 1911 except where contrary is indicated in any of the two Acts. If the town planning scheme sanctioned by the Municipal Committee fits in with the development scheme prepared by the Improvement Trusts, there may not be any difficulty in making adjustments but where the development scheme is entirely on a different basis, then, for the development of that locality, the scheme prepared by the Improvement Trust will have precedence. There is no bar to the Improvement Trust drawing up a development scheme for a locality wherein an area exists for which a town planning scheme prepared by the Municipal Committee and sanctioned by the Government exists.