cannot make use of it as it was not meant for them and they cannot be said to have come by that communication in accordance with the rules or practice. The resolution of the Cantonment Board does not cast any stigma on the petitioners. From the notice issued to the petitioners, nobody can imagine that the petitioners had been discharged from service for any misconduct or by way of punishment and since the resolution and the notice do not cast any stigma on the petitioners, their discharge from service cannot be held to be bad.

(36) No other point has been argued before me.

(37) For the reasons given above, these petitions fail which are dismissed but in the circumstances of the case, I leave the parties to bear their own costs.

*R.N.M.*

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit and H. R. Sodhi, JJ.*

KULWANT SINGH,—*Petitioner.*

*Versus*

THE INCOME-TAX OFFICER AND OTHERS,—*Respondents.*

**Civil Writ No. 3212 of 1968**

May 30, 1969

*Income-tax Act (XLIII of 1961)—Section 288(3)—Constitution of India (1950)—Article 19—Section 288(3)—Whether violative of Article 19—Conditions for the applicability of the section—Stated—Person not acting as Income-tax Officer immediately before retirement or resignation—Disqualification to act as authorised representative—Whether attaches.*

*Held,* that it is not the fundamental right of any person to practise the profession of representing the assessees as their authorised representative before the Income-tax authorities. Section 288(1) allows an assessee to attend before any Income-tax authority or the Appellate Tribunal either personally or through an authorised representative. Sub-section (2) of the same section mentions the persons who can act as authorised representative. Sub-section (3) places a bar on a certain type of authorised representatives not to act as such for a period of only two years. The Act could as well have laid down that the assessee had to appear personally before the Income-tax authorities. If that had been done, there could be no grievance to any one. Any person in order to represent as authorised representative derives his right from the provisions of section 288 only and not from the Constitution and if in that very section, certain restrictions are placed, they have

necessarily to be obeyed. No fundamental right guaranteed by the Constitution has been infringed by section 288. Section 288(3) is not violative of Article 19 of the Constitution as it does not impose any unreasonable restrictions on the carrying of a profession. (Paras 15 and 16)

*Held*, that in order to attract the applicability of section 288(3) of the Income-tax Act, 1961, following conditions must be satisfied : (i) The authorised representative must have previously been employed as Income-tax Authority not below the rank of Income-tax Officer; (ii) He must have served for not less than three years in any capacity under the Act or under the Indian Income-tax Act, 1922, from the date of his first employment as Income-tax Authority not below the rank of Income-tax Officer; (iii) He had retired or resigned from such employment, namely, as Income-tax Authority not below the rank of Income-tax Officer. If these three things are satisfied, then that authorised representative would not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation. The person concerned must have served as an Income-tax Authority, as detailed in section 116 of the Act, but not below the rank of Income-tax Officer, for at least three years during the course of his service after the date of his first appointment as Income-tax Officer or an officer higher in rank. If during his service, he has worked as an Income-tax Officer for not less than three years, after his first appointment as such, he is disqualified to represent any assessee for a period of two years from the date of his resignation. It is immaterial if, immediately before the date of his retirement or resignation, he had not acted as Income-tax Authority for a period of three years or more. If at any time during his service, he has acted as such for a period of three years or more, the disqualification attaches. (Paras 7, 8, 9 and 11)

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued directing the respondents not to interfere with the right of the petitioner to act as authorised representative under sub-section (2) of section 288 of the Income-tax Act, 1961.*

R. SACHAR, ADVOCATE, for the Petitioner.

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

PANDIT J.—This is a petition under Article 226 of the Constitution filed by Kulwant Singh against the Income-tax Officer, B-Ward, Ludhiana, the Commissioner of Income-tax and the Union of India, respondents Nos. 1 to 3, for a suitable writ directing the respondents not to interfere with the right of the petitioner to act as an authorised representative under sub-section (2) of section 288 of the Income-tax Act, 1961, hereinafter called the Act.

(2) According to the petitioner, he was appointed to officiate as an Income-tax Officer, Class II, in October, 1959, and posted at Ferozepur as Income-tax Officer. Prior to that, he was serving as Income-tax Inspector at Rohtak. He was transferred to Sangrur and posted as Income-tax Officer in July, 1960. After serving for about three years, he was transferred and posted as Assistant Controller of Estate Duty in the Estate Duty Circle on 8th May, 1963. He took over charge of the Estate Duty Circle at Patiala some time in June, 1963. He held additional charge of Income-tax Officer, Patiala, from 13th July, 1964, to 9th April, 1965. Since 9th April, 1965, the petitioner continued to serve as Assistant Controller of Estate Duty and did not have the charge of any Income-tax Ward. He had nothing to do with the execution or administration of the Act and was not an Income-tax Authority within the meaning of sections 116 and 288(3) of the Act. On the contrary, he was an Estate Duty Authority, being Assistant Controller of Estate Duty, under the Estate Duty Act, 1953. On 20th March, 1968, he voluntarily submitted his resignation from his employment as Assistant Controller of Estate Duty and the same was accepted, with the result that he was relieved on 16th April, 1968. The petitioner was a Law Graduate and was entitled to represent the income-tax assessees under section 288(2) of the Act as an authorised representative. On 17th August, 1968, he filed power of attorney before Shri B. D. Seth, Income-tax Officer, B-Ward, Ludhiana, for representing one Baldev Sahai, proprietor of Messrs. Dewan Chand, Baldev Sahai Ludhiana, who was an income-tax assessee. The petitioner was, however, told by Shri B. D. Seth that under section 288(3) of the Act, he was not entitled to act as an authorised representative for a period of two years from the date of his resignation. The petitioner explained to Shri B. D. Seth that section 288(3) did not apply to him, inasmuch as he was employed as Assistant Controller of Estate Duty at the time of his resignation and was not an Income-tax Authority. Shri B. D. Seth did not permit the petitioner to represent the said assessee. He, however, promised to inform the petitioner in writing within a week after seeking instructions from respondents Nos. 2 and 3. The needful was not done, though a period of over six weeks had elapsed. That led to the filing of the present writ petition in October, 1968.

(3) In the return filed by the respondents, it was admitted that the petitioner was appointed to officiate as Income-tax Officer, Class II,—*vide* orders, dated 6th October, 1959, passed by respondent No. 2. It was further admitted that the petitioner, since 9th April, 1965, was

working as Assistant Controller of Estate Duty at Patiala and with effect from that date, he was not entrusted with the duties under the Act. It was incorrect to say that he was not an Income-tax Authority within the meaning of sections 116 and 288(3) of the Act. The petitioner had all the time been officiating as Income-tax Officer, Class II, and was working as Assistant Controller of Estate Duty. In the notification, dated 31st October, 1966, the Central Board of Direct Taxes had directed that every Income-tax Officer appointed to be an Assistant Controller and posted to the Estate Duty-cum-Income-tax Circle, Patiala, would perform his functions as Assistant Controller in the said Circle. The petitioner was holding the post of an Income-tax Officer, Class II, officiating and was appointed to work as Assistant Controller in Estate Duty-cum-Income-tax Circle, Patiala. He had been appointed as Income-tax Officer under the Act and even after having been relieved of the duties under the Act, in order to enable him to discharge his duties under the Estate Duty Act properly, he remained an Income-tax Authority within the meaning of sections 116 and 288(3) of the Act. Ever since the enactment of the Estate Duty Act, 1953, there had been a close connection between the Income-tax Establishments and the Estate Duty Establishments. In the very first notification, dated 15th October, 1953, the Central Government, in exercise of powers conferred by section 4(2) of the Estate Duty Act, appointed every Commissioner of Income-tax, every Inspecting Assistant Commissioner of Income-tax and every Income-tax Officer for the time being functioning as such, to be respectively a Controller of Estate Duty, a Deputy Controller of Estate Duty and an Assistant Controller of Estate Duty. Since then, the jurisdiction of the particular Assistant Controller of Estate Duty-cum-Income-tax Officer had been fixed from time to time in accordance with the exigencies of administration of those laws. Under the latest notification, the jurisdiction of the petitioner was fixed as such Assistant Controller of Estate Duty-cum-Income-tax Circle, Patiala. The petitioner submitted his resignation on 20th March, 1968, and the same was accepted by respondent No. 2 on 16th April, 1968. He was working as Income-tax Officer, Class II-cum-Assistant Controller of Estate Duty, Patiala, and his resignation was accepted by respondent No. 2 as he was the appointing authority of Income-tax Officers, Class II. It was admitted that the petitioner was a Law Graduate. His right to represent income-tax assessees was, however, subject to the restrictions contained in section 288(3) of the Act. The Legislature in its wisdom had thought it fit to impose the restriction on the right of persons falling in the category of the petitioner, an Ex-Income-tax Authority,

to represent any assessee in the proceedings before any Income-tax Authority under the Act. There was nothing illegal or unjust about it.

(4) Learned counsel for the petitioner raised two contentions before us. In the first place, he submitted that section 288(3) of the Act was not applicable to the petitioner, because at the material time of submitting his resignation, he was not employed in the execution of the Act. His employment in the execution of the said Act ceased on 9th April, 1965, when he handed over charge of Income-tax Officer. His employment under the Estate Duty Act, 1953, as Assistant Controller of Estate Duty was totally independent of the Act and as such, he was not an Income-tax Authority within the meaning of sections 116 and 288(3) of the Act. Secondly, in the alternative, he contended that section 288(3) was *ultra vires* Article 19 of the Constitution, because the said provision infringed his freedom to practise any profession or to carry on any occupation, trade or business guaranteed to him under Article 19(1)(g) of the Constitution. The prohibition contained in the said sub-section was neither reasonable nor in the interest of general public within the meaning of Article 19(6) of the Constitution. In fact, the general public had been deprived of the services, experience and knowledge of the petitioner. It was also argued that the said sub-section denied the petitioner equality before the law and was violative of Article 14 of the Constitution.

(5) Let us now examine the first contention of the petitioner. The relevant part of section 288, reads thus—

*"Appearance of authorised representative.—*

(1) Any assessee who is entitled or required to attend before any Income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—

(i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or

(ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practise in any civil court in India; or

(iv) an accountant; or

(v) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(vi) any person who had acquired such educational qualifications as the Board may prescribe for this purpose; or

(vii) any other person who, immediately before the commencement of this Act, was an Income-tax practitioner within the meaning of clause (iv) of section 61 of the Indian Income-tax Act, 1922, and was actually practising as such—

* * * *

(3) Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an income-tax authority, not below the rank of Income-tax Officer, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act or under the Indian Income-tax Act, 1922, from the date of his first employment as such, he shall not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be.

* * * *

* * * *".

(6) Income-tax Authorities are mentioned in section 116 of the Act, which says :

"There shall be the following classes of Income-tax authorities for the purposes of this Act, namely,—

(a) the Central Board of Revenue;

(b) Directors of Inspection;

(c) Commissioners of Income-tax;

(d) Assistant Commissioners of Income-tax, who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax;

(e) Income-tax Officers; and

(f) Inspectors of Income-tax."

(7) In order to attract the applicability of section 288(3) of the Act, the following conditions, in my opinion, must be satisfied:—

(i) The authorised representative must have previously been employed as Income-tax Authority not below the rank of Income-tax Officer.

(ii) He must have served for not less than three years in any capacity under the Act or under the Indian Income-tax Act, 1922, from the date of his first employment as Income-tax Authority not below the rank of Income-tax Officer.

(iii) He had retired or resigned from such employment, namely, as Income-tax Authority not below the rank of Income-tax Officer.

(8) If these three things are satisfied, then that authorised representative would not be entited to represent any assessee for a period of two years from the date of his retirement or resignation. In other words, it means that the person concerned must have served as an Income-tax Authority, as detailed in section 116 of the Act, but not below the rank of Income-tax Officer, for at least three years during the course of his service after the date of his first appointment as Income-tax Officer or an officer higher in rank. The words "from the date of his first employment as such" mean from the date of his first appointment as an Income-tax Officer or in a higher office. "Under this Act or under the Indian Income-tax Act, 1922," mentioned in this sub-section, mean that he must have performed the duties as an Income-tax Authority (as stated in section 116). Consequently, it is immaterial if immediately before the date of his retirement or resignation, he had not acted as Income-tax Authority for a period of three years or more. If at any time during his service, he had acted as such for a period of three years or more, the disqualification attaches. "Formerly employed as an Income-tax Authority,

not below the rank of Income-tax Officer" in the sub-section means in the service of the Government as an Income-tax Authority, not below the rank of Income-tax Officer, at any time and not necessarily immediately preceding the date of resignation or retirement. "Employed" can also be interpreted as "holding the post of" or "working as" or "the state or fact of being employed" or "something on which a person or thing is employed."

(9) The petitioner, in my opinion, fully answers the requirements of this sub-section. Admittedly, he had been an Income-tax Officer and had served for not less than three years in that capacity from the date of his first appointment as an Income-tax Officer. Later on, he had resigned. It is true that he had tendered his resignation as Assistant Controller of Estate Duty. But he was holding the post of Income-tax Officer, Class II and was appointed to work as Assistant Controller in Estate Duty-cum-Income-tax Circle, Patiala. Even when he was discharging the duties under the Estate Duty Act, he remained an Income-tax Authority within the meaning of sections 116 and 288(3) of the Act. He was working as Income-tax Officer, Class II-cum-Assistant Controller of Estate Duty, Patiala, and his resignation was accepted by the Commissioner of Income-tax, respondent No. 2, because he was the appointing authority of an Income-tax Officer, Class II. It cannot be said that even though he had resigned as Assistant Controller of Estate Duty, but he still holds the post of Income-tax Officer, Class II. As a matter of fact, it is undisputed that he is no longer an Income-tax Officer, Class II, also. As I have said, it is not necessary that he should be working as Income-tax Officer immediately before he resigned. If during his service, he had worked as an Income-tax Officer for not less than three years, after his first appointment as such, he is disqualified to represent any assessee for a period of two years from the date of his resignation.

(10) It was contended by the learned counsel that because the petitioner was actually working as an Assistant Controller of Estate Duty when he resigned, he did not answer the description given in sub-section (3) of section 288 of the Act.

(11) There is no merit in this contention, because there are no words in the sub-section which mean that the disqualification is attached only to the person who had been working as an Income-tax Officer immediately before his retirement or resignation. The idea

for incorporating this section seems to be that a person who has, during his service, acted as Income-tax Officer or in the higher rank for three years or more should not be permitted to represent an assessee before the Income-tax Authorities for a period of two years after his retirement or resignation, so that he may not be able to exploit his position as such, soon after he relinquishes the charge of his office.

(12) Learned counsel referred to para 8.130 of the Report of the Direct Taxes Administration Enquiry Committee (1958-59) and the Select Committee Report given in "Income-tax Law and Practice" by O. P. Chopra, 1964 Edition, at page 1055, in order to interpret the provisions of section 288(3).

(13) It is undisputed that if the words of the statute are clear, it is unnecessary to make a reference to the Select Committee Report or the objects and reasons of the Act to find out the intention of the Legislature in enacting a particular provision of the Act. The language employed in section 288(3), in my opinion, is quite clear and capable of only one construction which I have already given above.

(14) Coming to the alternative argument of the learned counsel, the point for determination is whether section 288(3) is *ultra vires* Article 19 of the Constitution. Learned counsel submitted that the petitioner had a fundamental right to practise any profession or to carry on any occupation, trade or business as guaranteed by Article 19(1)(g) of the Constitution. Section 288(3), if interpreted in the way it has been done above, would interfere with that fundamental right of his. He would be prevented from acting as an authorised representative of his client Messrs Dewan Chand-Baldev Sahai before the Income-tax Officer, Shri B. D. Seth. The petitioner was Law Graduate and was entitled to represent the income-tax assessees under section 288(2) as an authorised representative. By virtue of section 288(3), he would not be able to represent even his own relations before any Income-tax Authority throughout India. These restrictions were neither reasonable nor in the interest of general public within the meaning of Article 19(6) of the Constitution. It is significant to mention that the members of the Appellate Tribunal do not suffer from this disqualification. Besides, there is no such bar either under the Estate Duty Act of 1953 or under the Punjab General Sales-Tax Act.

(15) The argument of the learned counsel suffers from an obvious infirmity. It is not the petitioner's fundamental right to practise the profession of representing the assessees as their authorised representative before the Income-tax authorities. Section 288(1) allows an assessee to attend before any Income-tax authority or the Appellate Tribunal either personally or through an authorised representative. Sub-section (2) of the same section mentions the persons who can act as authorised representatives. Sub-section (3) places a bar on a certain type of authorised representatives not to act as such for a period of only two years. The Act could as well have laid down that the assessee had to appear personally before the Income-tax authorities. Learned counsel conceded that if that had been done, the petitioner could have no grievance. The petitioner derives his right from the provisions of section 288 only and not from the Constitution and if in that very section, certain restrictions are placed, they have necessarily to be obeyed. No fundamental right guaranteed by the Constitution has been infringed by section 288. Learned counsel could not point out any fundamental right of the petitioner guaranteed to him by the Constitution, which was being violated by the impugned provision. That being so, the question of determining whether the restrictions imposed are reasonable or not does not arise.

(16) Section 288(3) is not violative of Article 19 of the Constitution as it does not impose any unreasonable restrictions on the carrying of a profession. There is no profession of representing an assessee. The assessee has to appear in person for the purpose of his assessments and he is only allowed the facility to appoint his authorised representative to represent him, in case he is not able or does not wish to appear in person. This facility is allowed to him by section 288 of the Act. That section also mentions as to who can be appointed as an authorised representative so that the assessee's choice is limited to the prescribed persons only. He cannot appoint anybody or everybody as his authorised representative according to his own choice or wish.

(17) Even if it be assumed for the sake of argument, that it was the petitioner's profession to act as the authorised representative of the assessees, then that profession was to be carried on subject to the restrictions contained in section itself. It could be carried on by those persons only who possessed the qualifications mentioned in that section or who were permitted to do so by the same. Those, who were not so qualified, could not claim that they were entitled

to carry on that profession, just as no person could take to the profession of an Advocate, an Architect, a Chartered Accountant, a Physician or a Surgeon, unless he had acquired the necessary qualifications prescribed by various statutes regulating the carrying on of those professions.

(18) It may also be noted that the restriction is operative only for two years from the date of retirement or resignation, which cannot be said to be unreasonable from any standard.

(19) It is also noteworthy that section 288 gives a right to the assessee to get himself represented by an authorised representative. The petitioner before us is not an assessee. In a certain case, an assessee might say that he had faith in a particular authorised representative, and he would like himself to be represented by him alone. It is doubtful if the petitioner has *locus standi* to say that he must be the authorised representative of a particular assessee under section 288 of the Act.

(20) A Division Bench of the Bombay High Court consisting of Chagla, C.J., and Gajendragadkar, J., in *Mulchand Gulabchand* v. *Mukund Shivram Bhide and another* (1), observed thus—

> "According to the Bar Councils Act and also the Bombay Pleaders Act, the right of a lawyer to practise before a tribunal is not an absolute right. It is a right subject to the provisions of any law for the time being in force. Therefore, the only right of a lawyer that has been safeguarded under the Constitution is the right to practise his profession. Now, that right not being an absolute right, no absolute right is conferred upon the lawyer by the provisions of the Constitution. The Constitution guarantees to the lawyer such right as he has under his charter. If any such right is affected or contravened, then undoubtedly he can rely upon the provisions of Article 19(f). But if the right given to him is a limited right and that right is not in any way affected, he cannot claim a wider right or a larger right under the Constitution."

(21) Reference may also be made to a passage given in Basu's Commentary on the Constitution of India, 5th Edition, Volume I, at

(1) A.I.R. 1952 Bom. 296.

page 752, under the heading "Right of a Lawyer to Practise". It is needless to mention that this passage is based on a number of decided cases.

> The right of a lawyer to practise is not a natural or absolute right but is subject to the terms and conditions laid down in the statute which enables him to practise, e.g., the Bar Council Act. What Article 19(1) (g) guarantees is that limited right to practise, subject to the terms imposed by the statute which gives him the statutory right to be enrolled and to practise. Hence, when that statutory right is expressly subject to 'any other law for the time being in force', and a law prescribes that a law shall have no authority to appear before a particular tribunal or authority, no fundamental right is infringed.
>
> The right to practise is also subject to the power of the High Courts to lay down rules relating to the admission of lawyers to represent suitors before them. It is equally subject to license being obtained from the Court before which the privilege to practice is sought, on payment of the stamp duty imposed by the Stamp Act."

(22) In view of the foregoing, I would hold that there is no merit in the contention of the learned counsel that section 288(3) is *ultra vires* Article 19(1)(g) of the Constitution.

(23) It was then half-heartedly argued that section 288(3) was also violative of Article 14 of the Constitution.

(24) There is no substance in this submission as well. All that was stated in the petition regarding Article 14 was that sub-section (3) of section 288 of the Act denied the petitioner equality before the law and was violative of Article 14 of the Constitution and was a colourable piece of legislation. It is undisputed that this Court cannot examine the question of the unconstitutionality of the Act on the score of Article 14 in the absence of specific allegations supported by the requisite material in that behalf. Undoubtedly, the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles vide the Supreme Court decision in *Charanjit Lal Chowdhry* v. *The Union of India and others* (2). A petitioner has to place before

(2) A,I,R, 1951 S.C. 41.

the Court the material on the strength of which he alleges that the provisions of a particular Act are *ultra vires* Article 14. It was held by the Supreme Court in *V. C. Rice and Oil Mills and others* v. *State of Andhra Pradesh, etc* (3).—

> "This Court has repeatedly pointed out that when a citizen wants to challenge the validity of any statute on the ground that it contravened Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Judged from that point of view, there is absolutely no material on the record of any of the appeals forming the present group on which a plea under Article 14 can even be raised. Therefore, we do not think it is necessary to pursue this point any further."

(25) Similarly, in a later decision in *Cochin Devaswom Board, Trichur* v. *Vamana Setti and another* (4), the Supreme Court observed—

> "A person relying upon the plea of unlawful discrimination which infringed a guarantee of equality before the law or equal protection of the laws must set out with sufficient particulars his plea showing that between the persons similarly circumstanced, discrimination has been made which is founded on no intelligible differentia. If the claimant for relief establishes similarity between persons who are subjected to a differenetial treatment it may lie upon the State to establish that the differentiation is based on a rational object sought to be achieved by the Legislature."

(26) In view of what I have said above, this petition fails and is dismissed but with no order as to costs.

H. R. Sodhi, J.—I agree.

(3) A.I.R. 1964 S.C. 1781.
(4) A.I.R. 1966 S.C. 1980.

*R.N.M.*