

Managing Director by his order, dated August 7, 1982, and thus the impugned orders stood validated. These orders cannot be sustained in view of our above observations.

(32) For the reasons recorded above, the appeal is accepted. The judgment of the learned Single Judge is set aside.

(33) Since the appellant has filed an affidavit giving up his entire claim with respect to his back wages from the date of acceptance of his resignation till the date of his reinstatement, the relief with respect to payment of back wages is declined. The orders, dated May 14, 1982 conveyed on May 18, 1982 and August 7, 1982 are quashed.

(34) The entire period from May 14, 1982 till the appellant is reinstated, shall be treated as leave of the kind due to him and the period shall be counted as a period spent on duty for the purpose of increment and retiral benefits. Keeping the equities in view, this order of our shall not affect the person who have already been promoted during this period. The appellant shall be entitled to reinstatement and consequent retiral benefits on his retirement and to no other benefits.

No order as to costs.

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R.N.R.

Before : J. V. Gupta, A.C.J. & K. P. Bhandari, J.

STATE OF HARYANA AND OTHERS,—Appellants.

*versus*

AMAR SINGH CLARE, ASSISTANT EXCISE & TAXATION OFFICER, OFFICE OF DEPUTY EXCISE & TAXATION COMMISSIONER, JAGADHRI AND OTHERS,—Respondents.

Letters Patent Appeal No. 180 of 1987.

12th February, 1990.

*Constitution of India, 1950—Art. 16(4) & 309—Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956—Rls. 2(f), 5 & 6—Reservation for promotion to class III-A service—No provision for reservation made—Claim for such reservation*

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*negatived—Rules under Art. 309—Retrospectivity of such rules—Constitutional validity of the rules.*

*Held*, that no provision has been made for reservation for promotion to Class III-A Service. Even with regard to Class III and Class IV posts, there is no provision for reservation where provision for direct recruitment was made in the Service Rules. So, on the plain reading of the instructions issued by the Government from time to time, it is clear that no provision has been made by the Government under Article 16(4) of the Constitution of India for reservation in the matter of promotion to Class III-A Service. Article 16(4) provides for making a positive provision for reservation wherever the Government considers it necessary. In the absence of any specific instructions of the Government making a provision for reservation for the members of the Scheduled Castes/Tribes and Backward Classes in Class III-A Service—the post of Assistant Excise and Taxation Officer, we are unable to read into the instructions such a reservation in the matter of promotion.

(Paras 9 & 13)

*Held*, that rules are in the nature of clarification of the existing position. No right has been invested or created in the petitioners and they were never promoted as Assistant Excise and Taxation Officers on the basis of reservation. It is well settled that the Rules under Article 309 of the Constitution can be made effective retrospectively. In this view of the matter, the view of the learned Single Judge that the notification issued under Article 309 of the Constitution is invalid cannot be upheld.

(Para 19)

*Judgment of the Learned Single Judge passed in C.W.P. No. 4137 of 1985 dated 29th January, 1987 reversed.*

*Letters Patent Appeal Under Clause X of the Letter Patent against the order dated 28th January, 1987 passed by Hon'ble Mr. Justice D. V. Sehgal in C.W.P. No. 4137/1985.*

CIVIL MISC. NO. 12618 of 1989:

*Application Under Order I Rule 10 read with S. 151 C.P.C. praying that the above noted applicants be allowed to be impleaded as intervening-respondents Nos. 32 to 34 in the interest of justice.*

*Dated the 12th February, 1990.*

S. S. Ahlawat, Sr. D.A.G. Haryana, for the Appellants.

H. L. Sibal, Sr. Advocate with R. K. Handa, for the Respondents.  
G. S. Bal, Advocate.

Subhash Ahuja, Advocate, for the applicant-respondents.

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**JUDGMENT**

**K. P. Bhandari, J.**

(1) This letters patent appeal is directed against the judgment and order passed by learned Single Judge. Learned Single Judge,—*vide* judgment and order dated 29th January, 1987, allowed the writ petition. The learned Single Judge came to the conclusion that, according to the instructions dated 23rd August, 1966 (Annexure P-2) and proceedings thereto, there was a provision for reservation for promotion to the posts of Assistant Excise and Taxation Officers for members of Scheduled Castes/Tribes and Backward Classes in the Punjab Excise and Taxation Department (State Service Class II-A) Rules, 1956 (hereinafter referred to as the Class II-A Rules). In view of this finding, the learned Single Judge further directed the respondents to work out the numbers of vacancies which ought to have been reserved for members of the Scheduled Castes/Tribes being 10 per cent of the total number of vacancies in the Service falling in the promotion quota from 1st November, 1966 to 23rd May, 1986, to prepare a roster and consider the petitioner and other eligible members of the Scheduled Castes/Tribes at the point reserved for Scheduled Castes/Tribes as per the relevant reservation policy from the date the vacancy at such points became available; and pass appropriate orders of appointment on adjudging their suitability consistent with the instructions in this regard. The State has come up against the aforesaid judgment and order passed by the learned Single Judge. In this way, this letters patent appeal raises an important question of law as to whether, according to the instructions of the Government, there is any provision for reservation for members of the Scheduled Castes/Tribes and Backward Classes in the matter of promotion to the post of Assistant Excise and Taxation Officer—State Service Class III-A.

(2) In order to appreciate the controversy involved in this case, it is necessary to refer to the material provisions of the Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956.

Rule 2(f) of the State Service Class III-A Rules defines the expression 'Service' as follows:—

“ ‘the Service’ means the Punjab Excise and Taxation Department (State Service Class III-A).”

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Provision of rule 3 of the Rules lays down that the service shall comprise the posts shown in Appendix 'A'. Appendix 'A' to the Rules describes the posts of Assistant Excise and Taxation Officer and prescribes the strength of the posts and the scale of pay. In other words, these Rules apply to the appointment and recruitment to the posts of Assistant Excise and Taxation Officer.

(3) Rule 5 of the State Service Class III-A Rules lays down that members of the Service shall be recruited in the following manner:—

- (a) by promotion from the cadres of Excise Inspectors and Taxation Inspectors (who have served as such for a period of at least 3 years);
- (b) by transfer of members of the ministerial establishment of the Excise and Taxation Department, Punjab; and
- (c) by competitive examination the syllabus for which shall be the same as in the case of competitive examination conducted by the Commission for recruitment to the Punjab Civil Service (Executive Branch) and allied Services."

Rule 6 of the State Service Class III-A Rules reads as follows:—

"When any vacancy occurs, or is about to occur in the Service, Government shall determine in what manner it shall be filled."

The provisions of rule 8 of the State Service Class III-A Rules read as follows:—

"Appointment to the Service by promotion shall be made by selection and no Excise Inspector or Taxation Inspector shall be deemed to have had his promotion withheld by reason of his not being selected for such appointment as of right."

It is, however, laid down in the provision of rule 6 that 50 per cent posts shall be filled up by direct recruitment and 50 per cent posts shall be filled up from the various categories such as Taxation

Inspectors and Excise Inspectors and by transfer from members of the ministerial establishment of the Excise and Taxation Department. The provisions of rule 5 of the State Service Class III-A Rules clearly lay down that in the matter of Assistant Excise and Taxation Officer—State Service Class III-A, the recruitment shall also be by direct recruitment.

(4) At this stage, it would be useful to refer to the Government instructions issued from time to time making reservations for the members of the Scheduled Castes/Tribes in the matter of promotion to the Service. The State Government,—*vide* Secretary to Government, Punjab, Scheduled Castes and Backward Classes Department letter No. 6486-5WG-II-63/19193, dated 12th September, 1963, issued instructions to all Heads of Departments etc. and decided that except in the case of All-India Services, 10 per cent of the higher posts to be filled by promotion should be reserved for the members of Scheduled Castes, Scheduled Tribes and Backward Classes (9 per cent for the members of Scheduled Castes and Scheduled Tribes and 1 per cent for the Backward Classes) subject to the following conditions:—

- (a) the persons to be considered must possess the minimum necessary qualifications; and
- (b) they should have at least a satisfactory record of service.

(5) The State Government,—*vide* Secretary to Government Punjab, Scheduled Castes and Backward Classes Department letter No. 10181-4WG-I-63/795, dated 14th January, 1964, issued instructions as under:—

Government have since then been receiving reference from several quarters seeking clarification in regard to the implementation of the said decision. After careful consideration of the matter, it has now been decided that:—

- (a) The said decision should be applied to all promotion posts already vacant on 12th September, 1963, or falling vacant thereafter.
- (b) The reservation should not imply that 10 per cent of the total posts reserved for promotion in any cadre have to

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be filled by Scheduled Castes personnel in the sense that all existing/future vacancies will be filled up by Scheduled Castes, Scheduled Tribes and other Backward Classes candidates until their share in higher services comes upto 10 per cent.

- (c) This provision of reservation applies to all State services including Class I, II, III and IV posts, the only exception being All-India Services.
- (d) This reservation should apply even in the case of short term leave vacancies unless it is likely to involve unnecessary dislocation of work in different offices and avoidable expenditure and inconvenience due to mid-year transfers etc.
- (e) So far as Scheduled Castes/Tribes are concerned, the very first vacancy existing on/arising after the 12th September, 1963, should be treated as reserved for them and only, if no official is available for promotion against the vacancy reserved for them in the first block of 10 vacancies, a candidate belonging to other Backward Classes may be selected in preference to the remaining officials against one such post only out of one hundred since the reservation for other Backward Classes may not exceed 1 per cent. However, if Scheduled Castes/Tribes candidate are available to fill one out of every ten vacancies, the specific reservation in favour of other Backward Classes should be the 51st vacancy.
- (f) One reserved vacancy should be carried over to the next block of ten vacancies in case it cannot be filled up within any block of ten posts. Thus, if no Scheduled Castes/Tribes/Backward Classes candidate is promoted against any of the first 10 vacancies the number of vacancies available to such candidates in the following block be two.
- (g) In case an out of turn promotion has already been given to a candidate belonging to Scheduled Castes/Tribes or Backward Classes against a reserved vacancy and then in the same block it happened to be the turn of a candidate

belonging to the said Castes/Classes for promotion, such candidate should not be ignored on the ground that 10 per cent reservation has already been exhausted.”

(6) The State Government,—*vide* Secretary to Government, Punjab, Scheduled Castes and Backward Classes Department letter No. 6872-WG66/24917, dated 23rd August, 1966, decided to fall completely in line with the policy of the Government of India in matters of reservation for promotion of Scheduled Castes/Tribes and Backward Classes candidates. According to these instructions, reservation for promotion to Class II was discontinued.

With regard to Class III and Class IV Services, the following principle was laid down:—

- (a) In the case of Class III and Class IV appointments, in grades or services to which there is no direct recruitment, there will be reservation, at 20 per cent for Scheduled Castes/Tribes and 2 per cent for Backward Classes in promotions made by (i) Selection or (ii) on the results of competitive examinations limited to departmental candidates. Where, however, there is direct recruitment the existing percentage of reservation at the time of recruitment will continue.
- (b) List of Scheduled Castes/Tribes and Backward Classes officials should be drawn up to fill the reserved vacancies, officials belonging to these classes will be adjudged separately, and not along with other officials and if they are suitable for promotion, they should be included in the list irrespective of their merit as compared to that of other officials. Promotions against reserved vacancies will, however, continue to be subject to the conditions of minimum necessary qualifications and satisfactory record of service.
- (c) Cases involving supersession of Scheduled Castes/Tribes and Backward Classes, will be reported within a month to the Minister concerned for information.

(7) A perusal of the aforesaid instructions clearly show that reservation for promotion to Class I and Class II posts was completely discontinued. With regard to Class III and Class IV posts

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also, there was to be no reservation for promotion to posts for which there was a provision for direct recruitment. In other words, reservation to Class III and Class IV posts was limited to the posts for which there was no opportunity for direct recruitment. It is important to note that in these instructions, no provision is made for reservation for Class III-A Service. Even with regard to Class III and Class IV posts, the reservation is applicable only if there is no provision for direct recruitment. According to rule 6 of the Rules, 50 per cent recruitment to the Service of Assistant Excise and Taxation Officer is by direct appointment and the remaining by promotion. On the plain reading of the instructions, no reservation is provided for Class III-A Service. Even otherwise, as in this Service since provision for direct recruitment is there, the instructions regarding reservation will not be applicable. In our opinion, after the issue of instructions dated 23rd August, 1966, earlier instructions dated 12th September, 1963 and 14th January, 1964 ceased to have any effect. For the purpose of finding out reservation for members of Scheduled Castes, Scheduled Tribes and Backward Classes in the matter of promotion, one has to address oneself to the principal instructions dated 23rd August, 1966.

(8) The State Government,—*vide* Secretary to Government, Haryana, Social Welfare and Backward Classes Department letter No. 2480-SW & BC-67/22979, dated 10th August, 1967, issued instructions to all Heads of Departments etc. regarding reservation for the members of Scheduled Castes, Scheduled Tribes and Backward Classes in promotion cases. It was stated as under:—

2. *Class III and Class IV appointments:*

- (a) In the case of Class III and Class IV appointment in regards of services to which there is no direct recruitment whatever, there will be reservation of vacancies at 20 per cent for Scheduled Castes/Tribes and 2 per cent for Backward Classes in promotions made by (i) selection or (ii) on the results of competitive examinations limited to departmental candidates."

Even a perusal of the aforesaid instructions clearly show that there is no reservation for promotion to Class III-A Service. Even with regard to Class III and Class IV Services respectively, reservation



is permissible only where there is no provision for direct recruitment. As already stated in the earlier part of the judgment, according to the provisions of rule 6 of the Rules, a specific provision has been made for recruitment to the Service, i.e., for the post of Assistant Excise and Taxation Officer, Class III-A Service, by direct recruitment as well as by promotion. It must be mentioned that for direct recruitment to the various posts under the Government, reservation is prescribed for members of Scheduled Castes/Tribes and Backward Classes. Consequently, whenever any recruitment is made to the posts of Assistant Excise and Taxation Officer by direct recruitment, due share of reservation is given to the members of Scheduled Castes/Tribes and Backward Classes.

(9) In all the aforesaid instructions, no provision has been made for reservation for promotion to Class III-A Service. Even with regard to Class III and Class IV posts, there is no provision for reservation where provision for direct recruitment was made in the Service Rules. So, on the plain reading of the instructions issued by the Government from time to time, it is clear that no provision has been made by the Government under Article 16(4) of the Constitution of India for reservation in the matter of promotion to Class III-A Service. However, in the matter of direct recruitment, provision for reservation for all State Services exists. For recruitment to the posts of Assistant Excise and Taxation Officer by direct recruitment there is reservation for the members of Scheduled Castes/Tribes and Backward Classes.

(10) It was argued by Mr. Ahlawat, Senior Deputy Advocate General, Haryana, on behalf of the State of Haryana that according to Government instructions P-2 dated 23rd August, 1966, no provision has been made for members of Scheduled Castes/Scheduled Tribes and Backward Classes for appointment by promotion to Class III-A Service. He has invited our attention to para 3 of the instructions, according to which reservation for promotion has been made only for members of Class III and Class IV posts in the matter of promotion where no provision is made in the Rules for direct recruitment to the Service. It was vehemently argued by him that Assistant Excise and Taxation Officers when recruited by way of direct appointment, necessary provision is made for reservation for the members of Scheduled Castes/Tribes in the matter of appointment. He further contended that on a plain reading of para 3 of these instructions, no provision is made for reservation in Class III-A Service for appointment by promotion to the post of Assistant Excise and Taxation

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Officer. He further emphasised that according to the provisions of rule 5, direct recruitment is made to State Class III-A Service. For these reasons, no reservation can be claimed by the members of Scheduled Castes/Tribes or Backward Classes in the Matter of promotion on the basis of the instructions dated 23rd August, 1966. Learned counsel emphasised that the reservation under para 3 of the instructions is limited to cases where for Class III and Class IV Services there is no provision for direct recruitment. He also invited our attention to the fact that Class III-A Service comprising of the post of Assistant Excise and Taxation Officer is higher than Class III Service. Para 3 of the Government instructions P-2 makes no provision whatsoever for reservation for the members of Class III-A Service in the matter of promotion. Indeed, Class III-A Service is not at all mentioned in the notification dated 23rd August, 1966. It is further submitted that the judgment of learned Single Judge is based on misreading of the scope of the said instructions.

(11) Mr. H. L. Sibal, Senior Counsel appearing for the respondents, submitted that there is a reservation for the members of Scheduled Castes/Tribes and Backward Classes in view of the instructions dated 16th January, 1964 and 23rd August, 1966. It was further contended by Mr. Sibal that reservation in the matter of promotion has been discontinued for Class II or a higher service or post. In other words, the argument raised is that reservation has been discontinued for Class II and Class I Service, respectively and that with regard to all other Services, the reservation in the matter of promotion should be taken to be provided. We have carefully considered the contentions advanced at the Bar. We are of the opinion that the instructions aforesaid nowhere provide for reservation in the matter of promotion to Class III-A Service-the post of Assistant Excise and Taxation Officer. We also find that according to para 3 of the said instructions, the reservation in Class III and Class IV Service in the matter of promotion has been made only where no provision is made for direct recruitment in the Service. For appointment to the post of Assistant Excise and Taxation Officer, there is a provision in rule 5 of the statutory Rules for appointment by direct recruitment. So, on a plain reading of the instructions, we find that no provision has been made by the Government for reservation in the matter of promotion for members of Class III-A Service-the post of Assistant Excise and Taxation Officer.

(12) In this connection, it will be useful to refer to the scheme of Article 16 of the Constitution of India which finds place under the Chapter of Fundamental Rights. Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16(4) lays down that nothing contained in this Article prevents 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. Provisions of Article 16(4) are in the nature of an exception. Article 16(4) empowers the Government to make suitable provision for reservation. This is only an enabling provision which confers a discretion on the Government to make reservations. Unless a reservation is provided for in favour of any Backward Class of citizens, no one can claim the right of reservation. It has been held by the Supreme Court in *Rajenderan v. Union of India* (1), that clause (4) to Article 16, being an exception to clause (1) of Article 16 of the Constitution, should be strictly construed. It should be interpreted in a manner that it does not render the guarantee given in clause (1) altogether negatory or illusory. In *General Manager v. Rangachari* (2), it was ruled by their Lordship of the Supreme Court that Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation of appointments in favour of Backward Classes of citizens which in its opinion is not adequately represented either numerically or qualitatively. In *Peeriakaruppan v. State of Tamil Nadu* (3), it was held by their Lordships of the Supreme Court that Article 16(4) confers no constitutional rights upon members of the Backward Classes or any corresponding duty on the State for making reservation at the stage of recruitment or at the stage of promotion.

(13) We have given for anxious consideration to the matter but have not been able to find anything in the aforesaid instructions of the Government making any provision for reservation for the members of Class III-A Service in the matter of promotion. No reservation can be inferred by stretching the language of the Government instructions. Article 16(4) provides for making a positive provision for reservation wherever the Government considers it necessary. In the absence of any specific instructions of the Government making a provision for reservation for the

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(1) A.I.R. 1968 S.C. 507.

(2) A.I.R. 1962 S.C. 36.

(3) (1971) S.C.R. 430.

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members of the Scheduled Castes/Tribes and Backward Classes in Class III-A Service—the post of Assistant Excise and Taxation Officer, we are unable to read into the instructions such a reservation in the matter of promotion. We are unable to subscribe to the view taken by the learned Single Judge in allowing the writ petition and directing the State to give benefit of reservation to the members of Class III-A Service in the matter of promotion. The view of the learned Single Judge is not justified by the language of the Government instructions relied upon by him in support of his view.

(14) In our opinion, the learned Single Judge has overlooked the provision of rule 5 which clearly makes provision for direct recruitment in the case of Assistant Excise and Taxation Officers. As provision for direct recruitment has been made in the Service Rules, so according to the Government instructions aforesaid, no provision for reservation has been made in the matter of promotion. In view of this matter, we are unable to subscribe to the view taken by the learned Single Judge.

(15) Mr. Sibal brought to our notice that at one stage, the Haryana Government was inclined to accept the stand of the respondents. He drew our attention to letter dated 19th February, 1982, from the Chief Secretary to Government, Haryana, addressed to the Financial Commissioner and accordingly, to the Government of Haryana, Excise and Taxation Department. This letter is based upon the following advice tendered by the Law Department :—

“The question posed by the A.D. is whether it will be necessary to provide reservation for the Scheduled Castes/Scheduled Tribes and Backward Classes for the posts of A.E.T.Os. until 21st September, 1973 or not? Attention of the A.D. is drawn towards instructions dated 12th September, 1963 and 23rd August, 1966 placed on the file of the A.D. and the earlier instructions. In the opinion of this department, it will be necessary to provide reservation in the category of A.E.T.Os. upto 21st September, 1973.”

In the light of this opinion, the Chief Secretary to Government, Haryana, wrote to the Administrative Secretary concerned that there is no objection if the posts of A.E.T.Os. may continue to be Class III-A till 21st September, 1973 so that the officers belonging to the

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Scheduled Castes may not be deprived of their quota of promotion for the period upto 21st September, 1973.

(16) The Law Department did not correctly appreciate that the instructions dated 12th December, 1963, which provide for reservation in Class I, Class II and higher Services, have been modified by the Government by instructions dated 23rd August, 1966. Further, the Law Department did not notice that in the cadre of Assistant Excise and Taxation Officers, there is a provision for direct recruitment, thus the benefit of reservation under the instructions dated 23rd August, 1966 cannot be given even in Class III Service. In this view of the matter, the inter-departmental communication is based on an erroneous opinion of the Law Department. No benefit can be claimed by the petitioners on the basis of incorrect inter-departmental communication.

(17) Mr. Sibal, Senior Counsel appearing for the respondents, cited *Lalappa Lingappa and others v. Laxmi Vishnu Textile Mills Ltd.*, (4); *The Authorized Officer, Thanjavur and another v. Naganatha Ayyar etc.* (5); and *Alembic Chemical Works Co. Ltd. v. The Workmen*, (6). These authorities lay down general principles of interpretation. There can be no dispute about these general principles. The question before us is very short as to whether, according to the Government instructions, there is any provision for reservation for members of Class III-A Service. These authorities do not assist us with regard to determination of the said question.

(18) The learned Single Judge declared the notification dated 17th January, 1973 as *ultra vires*, being contrary to the provisions of the aforesaid statutory Rules issued under Article 309 of the Constitution. In view of the fact that there is no provision for reservation in the matter of promotion for the members of Class III-A Service, the petitioners have no *locus standi* to challenge the notification Annexure P-3. Even otherwise, by this notification the Government has merely re-classified the posts and declared them to be gazetted. In this connection, reference may be made to para 1(ii) of the written statement dated 21st November, 1986 on behalf of the State filed through the Deputy Secretary to Government, Haryana, Excise

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(4) AIR 1981 S.C. 852.

(5) AIR 1979 S.C. 1487.

(6) AIR 1961 S.C. 647.

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and Taxation Department. The relevant paragraph 1(ii) of the written statement reads as follows:—

“That according to Government instructions No. 333-III-J/1132, dated 15th/18th April, 1959 (copy at Annexure R-1) a combined examination for recruitment to similar posts/ services was required to be held by the State Public Service Commission. The following posts comprised Group I:—

1. PCS (Executive Branch).
2. Excise and Taxation Officers.
3. Assistant Excise and Taxation Officers.
4. Tehsildars.
5. Block Development Officers.
6. Assistant Registrars, Co-operative Societies, Punjab.
7. Secretaries of Municipalities and District Boards.
8. Assistant Employment Officers.
9. Lady Organizer, Public Relations Departments.
10. District Public Relations Officers.
11. Public Relations Officer, Capital Administration.
12. Assistant Public Relations Officers in the Public Relations Department.

The aforesaid instructions lay down that the posts in each Group have been placed in the order of their superiority and will be offered to the successful candidates in the order of their position in the merit list keeping in view the preference given by them. It will thus be observed that the posts of Assistant Excise and Taxation Officers have been shown superior to these of Block Development Officers and Assistant Registrars Co-operative Societies and other similar posts, which are not only Class II gazetted posts but constitute allied service to the State Civil Services. To treat the post of the Assistant Excise and Taxation Officer as Class III is, therefore, illogical.”

The above factual stand of the State Government clearly shows that Class III-A Service — Assistant Excise and Taxation Officers — was considered at par with gazetted posts. The expression 'gazetted' is defined in rule 2.22 of the Punjab Civil Service Rules, Volume I, Part I. According to this notification, the Government is empowered to declare a post to be a gazetted one. Mere declaration of the Government is enough for declaring a post gazetted. The notification dated 21st September, 1973 merely gives such a declaration. So, we are unable to find how this notification is in conflict with the statutory rule. We do not share the view on this point taken by the learned Single Judge.

(19) The learned Single Judge also declared the notification, issued by the Haryana Government,— *vide* Excise and Taxation Department letter No. GSR/Const./Art. 309/Amd. (1)-86, dated 23rd May, 1986 under Article 309 of the Constitution, as invalid. This notification has been given retrospective effect from 21st September, 1973. The learned Single Judge proceeded on the premises that the petitioners, who are members of the Scheduled Castes, have the right of reservation in the matter of promotion and that right cannot be taken away by issuing the retrospective rules under Article 309 of the Constitution. We are unable to agree with the view of the learned Single Judge; firstly, because the petitioners have no legal right of claiming reservation in the matter of promotion in Class III-A Service and, secondly, as the Rules are in the nature of a clarification of the existing position. No right has been invested or created in the petitioners and they were never promoted as Assistant Excise and Taxation Officers on the basis of reservation. It is well settled by the decision of the Supreme Court in *B. S. Vadera v. Union of India and others* (7), that the Rules under Article 309 of the Constitution can be made effective retrospectively. In this view of the matter, it is difficult for us to uphold the view of the learned Single Judge that the notification issued under Article 309 of the Constitution is invalid.

(20) For the aforesaid reasons, we accept this letters patent appeal, set aside the judgment and order passed by the learned Single Judge and dismiss the writ petition with no order as to costs. C.M. No. 12618 of 1989 is allowed.

S.C.K.

(7) A.I.R. 1969 S.C. 118.