
(1975) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1223 of 1972

Inderjit Chaudhry

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision : 18-03-1975

Acts Referred:

Constitution of India, 1950 — Article 16(4)

Citation : (1976) 2 ILR (P&H) 219 : (1975) 77 PLR 553

Hon'ble Judges : S.S. Sandhawalia, J; Prem Chand Jain, J

Bench : Division Bench

Advocate : Kuldip Singh with Mr. R.S. Mongia, for the Appellant; D.N. Rampal, Asstt. Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, J.—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, 1965, 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. 2662-5WGII-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 representation but the same was rejected. Feeling aggrieved from the action of the Government, the petitioner filed the present write 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. Kuldeep Singh, Learned Counsel for the petitioner, that the petition was entitled to the benefit of (sic) for promotion to the higher post and that the instructions contained in circular letter, dated 20th April, 1961 (copy Annexure G) had no applicability and did not in any way debar the petitioner from claiming the benefit of rescission 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 and as much (sic) 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. Kuldeep 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. 1,000/- per annum irrespective of the fact as to which caste, community or class they belong to and what profession they are following.

(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 Vs. Rangachari*,

We must in this connection consider an alternative argument that the word "post" 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 it would be unreasonable to assume that the reservation of appointments would not include both the methods of reservation, namely, reservation of appointment 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 Tribe 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-SWI-74/8105, dated 4th May, 1974, was also brought to our notice showing that except the All India Services, even reservation was made in case of promotion to Class I and 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, 1910, 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.

13. I agree.