

(1961) 04 SC CK 0019
In the Supreme Court Of India
Case No : Writ Petition (civil) 28 of 1959

Kishori Mohanlal Bakshi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)
Income Tax Act, 1922 — Section 5

Citation : AIR 1962 SC 1139 : (1962) 44 ITR 532

Hon'ble Judges : N. Rajagopala Ayyangar, J; K. C. Das Gupta, J; J. R. Madholkar, J; B. P. Sinha, J; A. K. Sarkar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Das Gupta, J.—The petitioner, an income tax Officer, in the service of the Government of India has filed this petition for protection of his fundamental rights under article 14 and article 16 of the constitution which he claims to have been violated by the respondent, the Union of India. The petitioner who was appointed an income tax inspector in the income tax Department of the Government of India in 1943 became an income tax Officer in the same department on promotion in 1946. It appears that the income tax services were reconstituted by an order of the Government of India dated September 29, 1944, and later on in 1953 section 5 of the income tax Act was amended in accordance with this decision to reconstitute. One of the feature of the reconstitution was that in place of the one class of income tax Officer, two classes came into existence, one consisting of income tax Officers of Class I service and the other class in which all the then existing income tax Officers were placed forming the Class II Officers, Class I Officers were eligible to be promoted to the higher post of Commissioners and Assistant Commissioners; Class II Officers would not however be eligible for direct promotion to these higher posts. They could obtain such promotion only after having first reached the status of Class I Officers. A percentage of the vacancies in the posts of Class I Officers, was to be filled by

promotion of Class II Officers and the rest by direct recruitment. It may be mentioned that Officers in Class II are eligible to compete for the direct recruitment, provided the requirements as regards age and other matters are satisfied.

2. The main contention which Mr. Jha has pressed before us on behalf of the petitioner is that this provision as regards recruitment to post of Commissioners and Assistance Commissioners from class I Officers but not directly from Class II Officers violates article 16(1) of the Constitution. It is difficult to understand this argument. What article 16(1) provides is that there should be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It might very well be that "matters relating to employment or appointment to any office" are wide enough to include the matter of promotion. Inequality of opportunity for promotion as between citizens holding different posts in the same grade may therefore be an infringement of article 16. Thus, if, of the income tax Inspectors some were made eligible for promotion as Income- tax Officers and others were not, there would be legitimate ground for complaint that article 16(1) has been violated. No such complaint can however be reasonably made, if for example, all income tax Officers while Income- tax Sub-Inspectors are eligible for promotion only as Income tax Inspectors but not directly as income tax Officers. Similarly, if of the income tax Officers of the same grade, some are eligible for promotion to a superior grade, and others are not, the question of contravention of Art. 16(1) may well arise. But how can such question arise at all when the rules make Income tax Officers of Grade I, eligible for appointment as Assistant commissioners. But make Income tax officers of Class II eligible for promotion as income tax Officers of Class I but not for promotion to the post of Assistant Commissioners? There is no denial here of equality of opportunity as among citizens holding posts of the same grade. As between citizens holding posts in different grades in government service there can be no question of equality of opportunity. It is fantastic to suppose that Art. 16 of the Constitution forbids the creation of different grades in the government service, that is what the petitioner's argument amounts to. The contention that Art. 16 has been violated because Class II income tax Officers are not eligible for promotion to higher posts, like the posts of commissioners and Assistant Commissioners directly is, therefore wholly unsound.

3. The only other contention raised is that there is discretion between class I and Class II Officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates article 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with article 14. The contention that article 14 of the constitution has been violated therefore also fails.

4. The petition is accordingly dismissed with costs.

5. Petition dismissed.