

(2016) 10 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17523 of 2016 (O&M).

Sujan Singh Sangwan - Petitioner @HASH Union of India and another

Date of Decision : 03-10-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 15(5), Article 16(4), Article 226

Citation : (2017) 2 PLR 381 : (2017) 1 SCT 239

Hon'ble Judges : S.S. Saron and Lisa Gill, JJ.

Bench : Division Bench

Advocate : Sujan Singh Sangwan, Petitioner in Person, for the Petitioner

Final Decision : Disposed Off

Judgement

S.S. Saron, J. - The petitioner has filed the present petition in the nature of public interest litigation for declaring Articles 15 (4), 15 (5) and 16 (4) of the Constitution of India as also the provisions of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 as unconstitutional as these discriminate on the basis of caste or religion in the territory of India; besides, these laws alter the basic structure or framework of the Constitution and damage, emasculate, destroy, abrogate, change or alter the basic structure or framework of the Constitution.

2. The petitioner has mentioned his name, address, email Id, mobile number, Aadhar card number and PAN card number. A copy of his income tax return (Annexure P1) for the year 2016-17, has been placed on record. The petitioner states that he is an advocate by profession. He further states that he did not have his own identity in this world. The birth and name is given by others, education and experience is also given by others. Everything that he has in this world, it is submitted, has been given by others. Now, it was the right time for him to pay the debt and thus being citizen of India, it is stated that he is competent to invoke the writ jurisdiction of this Court by filing the present petition.

3. A reference has been made to the recent agitation i.e. the "Jat Andolan" by a

particular caste demanding reservations. This, according to the petitioner, is very harmful to the State of Haryana and also the nation. It is also stated that some other castes demand and protest against it. A reference has been made to various agitations in this regard. These agitations, according to the petitioner, were the product of the laws which discriminate on the basis of caste/religion in India. It is submitted that the great country should have one law, one Constitution and one Flag. Otherwise, such agitations would occur in series which were very harmful to the society and the nation. According to the petitioner, the division of society on the basis of caste is the problem which the society is facing.

4. The petitioner filed a similar petition i.e. Writ Petition (Civil) No. 235 of 2016 in the Supreme Court of India which was disposed of by a Three Judge Bench of the Supreme Court on 11.07.2016 with the following order:-

"Having heard learned counsel for the petitioner who is present in-person, we do not consider the present to be a fit case for our interference in exercise of our power under Article 32 of the Constitution of India.

The writ petition is accordingly dismissed.

We however make it clear that this order shall not prevent the petitioner from challenging the constitutional validity of any specific piece of legislation on any ground otherwise available to him in law before the jurisdictional High Court and to seek redress if any due to him."

5. The petitioner has assailed the specific piece of legislation i.e. the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016. However, the said matter is already under consideration in the case of Murari Lal Gupta v. State of Haryana, CWP No. 9931 of 2016 and other connected matters. The petitioner may, if so advised, raise his contentions in the said cases. However, the present petition seeks the striking down the provisions of Articles 15 (4), 15 (5) and 16 (4) as unconstitutional as well, which for the present is quite far-fetched.

6. In T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, it was stated by way of an example that when by law a reservation is made in favour of a member of a backward class in the matter of appointment, the reservation is no doubt made on the basis of caste and that it was also true that to the extent of the reservation other citizens were discriminated against on one of the basis prohibited under Article 16 (1). Nevertheless, such legislation would be valid because the reservation is not only on the basis of caste/race but because of the additional factor of their backwardness. Clauses (3) and (4) of Article 15 like clauses (3), (4) and (4- A) of Article 16 merely make explicit what is otherwise implicit in the concept of equality under Article 14.

7. In E.V. Chinnaiah v. State of A.P., (2005) 1 SCC 394, a Five Judge Bench of the Supreme Court held that in relation to the backwardness arguably reservation in favour of a caste cannot by itself be a ground for grant thereof but may only be

one of the several factors for determining the criteria of backwardness under Article 16 (4) which provides for the following criteria: (i) There must be a backward class of citizens. (ii) The said class in the opinion of the State is not adequately represented in the services of the State. Provision for reservation can be made only when both the conditions were satisfied. It was further held that indisputably it is only because the Scheduled Castes, Scheduled Tribes and other socially and economically backward class of citizens are not in a position to compete with the general category candidates, that the equality principle has been adopted by way of affirmative action by the State Government in making reservations in their favour both as regards admission in educational institutions and public employment. The doctrine of equality, it was held, is the fibre with which the constitutional scheme is woven.

8. In *Nair Service Society v. Dr. T. Beermasthan*, (2009) 5 SCC 545, it was held that reservation provisions are enabling provisions. The State was not bound to make reservations but it is empowered to do so in its own discretion. Different State Governments in the country may have different methods for providing reservations, and these would be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for the Court to decide on the wisdom or otherwise of the method of reservation. Courts should exercise judicial restraint and not interfere with the same unless there is some clear illegality.

9. Therefore, provisions for reservations provided by the Constitution are enabling and permissive in nature. It is left for the States to provide for reservations in the matter of admissions and public employments. If the States enact a law providing for reservations without adhering to the parameters providing for reservations, then the Courts would interfere to strike down such legislation. However, a legislation providing for reservations cannot be struck down in vacuum without a cause of action and without the rights of the person who seek their invalidation being affected by it.

10. The petition that has been filed is in vacuum without mentioning as to how and in what manner and in relation to which subject the rights of the petitioner are affected or infringed. Besides, the provisions of Articles 15 (4), 15 (5) and 16 (4) are part of the Fundamental Rights and fall in Part-III of the Constitution relating to Fundamental Rights, therefore, the same cannot on the mere averments of the petitioner be said to be contrary to the basic structure of the Constitution. The petitioner has not cited any case law so as to invalidate the said Articles and hold the same to be contrary to the b