

in the light of the above extracted observations, no notice was required to be issued to the petitioners nor it was warranted to afford an opportunity of being heard to them.

(19) The alleged gift in favour of the petitioners is repugnant to the basic Scheme of the Act. The area stood already declared surplus on 1st January, 1960 by the competent authority. Bhagwani was, in fact, given time to make choice of her reserved area which she liked to retain and make the necessary declaration. During this interregnum, she made an endeavour to thwart the substantive object of the law by executing and registering the gift deed in favour of her own daughters.

(20) In view of the preceding discussion, no case is made out for issuance of desired writ quashing the impugned orders. Consequently, this petition is dismissed.

R.N.R.

Before Permod Kohli, J.

SARUP SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 5513 of 1984

11th December, 2008

Constitution of India, 1950—Arts. 16(4) and 226—Instructions dated 4th October, 1967, 22nd December, 1980 and 5th December, 1975 issued by State Government—A member of reserved category seeking promotion to post of S.E.-Reservation policy—Whether applied to permanent vacancies only—Held, no—Instructions provide that reservation policy also applicable to temporary, short term including deputation vacancies—Respondents applying reservation policy only to permanent vacancies—Petitioner entitled to be considered for promotion as S.E. against one of temporary and deputation vacancies—Petition allowed.

Held, that from the perusal of instructions dated 4th October, 1967, 22nd December, 1980 and 5th December, 1975, it becomes apparent that the reservation policy has been applied not only to the permanent vacancies, but also to temporary, short term, including deputation vacancies. Not only this, even the short term leave vacancies have been brought within the purview of the reservation, although the benefit of reservation shall remain till the short term vacancies are available. The continuance of these government instructions is not in dispute. The respondents have applied reservation policy only to the permanent 13 vacancies and not to 6 temporary and 8 deputation vacancies, though the reservation policy is applicable to these vacancies as well. In view of the above circumstances, there is substance in the contention of the petitioner. All these 27 vacancies were available in the year 1983 when the petitioner became eligible for promotion to the post of Superintending Engineer. As per the reservation policy dated 4th May, 1974, Roster Point No. 15 was meant for the members of the Scheduled Castes. It is also not disputed that the petitioner was the senior most member of the Scheduled Castes in the year 1983. But he was not considered for promotion, rather the vacancy was filled up by granting promotion to the candidate of General Category in total contravention of the notified government policy and resultantly this amounts to violation of Article 16(4) of the Constitution of India.

(Para 5)

Further held, that the petitioner was promoted as Superintending Engineer on his turn in the year 1985 and has thereafter retired from service. Petitioner was entitled to be considered for promotion at Roster Point No. 15 against one of the six temporary and eight deputation vacancies. It is nowhere stated in the reply that these six temporary and 8 deputation vacancies were reduced or abolished at any given time after 1983. Thus, it is presumed that these vacancies remained available all along and are thus still available till date of filing of the last affidavit dated 25th October, 2008. The petitioner was entitled to be considered against Roster Point No. 15 in the year 1983 as a member of the Scheduled Castes which consideration has been denied to him.

(Para 6)

Sarup Singh, *petitioner in person*

S.S. Sahu, *AAG, Punjab.*

PERMOD KOHLI, J.

(1) At the time of filing of this petition, petitioner was serving as Executive Engineer of Punjab PWD (B&R Branch). After joining as Assistant Engineer in Punjab PWD (B&R Branch) on 26th December, 1964 on his selection by Punjab Public Service Commission, the petitioner was promoted as Executive Engineer on 1st December, 1971. He was later placed in senior scale of P.S.E. Class I with effect from 1st December, 1982,—*vide* Punjab Government Order dated 24th April, 1984. The petitioner claims that his performance as Engineer has been excellent and he was selected for various prestigious refresher courses and has also been instrumental in construction of various prestigious projects of the Punjab Government like Punjab Bhavan, New Delhi, Sri Dasmesh Academy, Anandpur Sahib etc. The petitioner belongs to Scheduled Caste Category. Under the policy instructions of the State Government as notified,—*vide* instructions dated 4th May, 1974 (Annexure P-1), 14% reservation is prescribed for promotion to and within Class-I and Class-III posts. It is the case of the petitioner that the reservation is applicable for promotions to the temporary and short term vacancies as well and for this reference is made to various Government Instructions (Annexures P-2 to P-6). While referring to instructions dated 5th December, 1975 (Annexure P-6), it is contended that the reservation policy is applicable to regular, temporary and deputation posts held by the Officers in a particular rank and cadre. Under instructions dated 4th May, 1974, roster has been notified and the vacancies at Sr. Nos. 1, 7, 15, 22, 30 are reserved for promotion to the members of the Scheduled Castes. These instructions came into force from 6th March, 1974. It is stated that till 11th May, 1984, 14 vacancies of Superintending Engineers were filled up,—*vide* order dated 11th May, 1984. The case of the petitioner is that two Executive Engineers under Scheduled Castes Category were senior to him and they occupied the Roster points at Sr. Nos. 1 and 7. The petitioner is left as the senior most Executive Engineer. He was entitled to occupy Roster Point No. 15, in accordance with the reservation policy dated 4th May,

1974 referred to here-in-above, but he has been denied the consideration and the benefit of reservation, despite being eligible and meritorious. According to the petitioner, this slot meant for reserved category of scheduled castes candidates has been filled up by granting promotion to the General Category candidates which is in gross violation to Article 16(4) of the Constitution of India as also the Government Instructions referred to here-in-above. According to the petitioner, as many as 27 vacancies of Superintending Engineers were available. There are 19 Officers in the Department and 8 Officers on deputation who are holding the ranks of Superintending Engineers. All of them are the confirmed Engineers and out of 27 Superintending Engineers, only two are the members of the Scheduled Castes. It is further stated that all the 8 deputationists belong to General Category. The petitioner made various representations claiming promotion against the roster point for Scheduled Castes Category. Some of the representations have been placed on record as Annexures P-9 and P-10.

(2) While admitting that the petitioner is a member of Scheduled Castes Category and belongs to reserved category, the respondent-State has taken a clear stand that there are only 13 sanctioned vacancies of Superintending Engineer and two vacancies are occupied by the members of Scheduled Castes, namely, Shri G.S. Dhaliwal and G.S. Gurmail Bhatwa at Sr. Nos. 1 and 7.

(3) *Vide* order dated 16th July, 2004, respondent-State was directed to file an additional affidavit of some responsible Officer giving details of the permanent as well as temporary posts (including deputation reserve) of Superintending Engineers existing at the relevant time. In furtherance to the aforesaid direction, an affidavit dated 13th August, 2004 has been filed. When this matter was taken up on 20th October, 2008, it was found that the affidavit filed lacks relevant information as directed by this Court,—*vide* order dated 16th July, 2004. It was also observed that the deponent has tried to hoodwink the court without giving details of available permanent/temporary/deputation posts available in the year 1983. Accordingly, another opportunity of one week was allowed to the respondents to file an appropriate affidavit. In response to the aforesaid direction, an additional

affidavit of S.S. Khara, Additional Secretary to Government of Punjab, Department of Public Works (B&R Branch), Chandigarh has been filed,—*vide* CM No. 21237 of 2008 which was listed after the case was reserved and has been taken on record by separate order dated 20th November, 2008.

(4) In the additional affidavit filed, it is stated that the cadre of Superintending Engineer was determined as 13 posts with effect from 1st January, 1982,—*vide* Memo dated 21st January, 1983. It is admitted that in the year 1983, the sanctioned strength of Superintending Engineers (Civil) had been increased to 19 posts. While giving details of twenty seven posts mentioned in paragraph 9 of the affidavit, there were 13 permanent posts and six temporary posts in the department and eight posts were with other organizations on deputation. In this manner, the respondents have admitted the factual averments made in the writ petition regarding availability of 27 posts i.e. 13 permanent, 6 temporary and 8 deputation posts in the cadre of superintending Engineers.

(5) The petitioner who argued in person, referred to Government Instructions dated 4th October, 1967, 22nd December, 1980, 5th December, 1975 (Annexures P-4 to 6, respectively). From the perusal of these instructions, it becomes apparent that the reservation policy has been applied not only to the permanent vacancies, but also to temporary, short term, including deputation vacancies. Not only this, even the short term leave vacancies have been brought within the purview of the reservation, although the benefit of reservation shall remain till the short-term vacancies are available. The continuance of these government instructions is not in dispute. The respondents have applied reservation policy only to the permanent 13 vacancies and not to 6 temporary and 8 deputation vacancies, though the reservation policy is applicable to these vacancies as well. In view of the above circumstances, there is substance in the contention of the petitioner. All these 27 vacancies were available in the year 1983 when the petitioner became eligible for promotion to the post of Superintending Engineer. As per the reservation policy dated 4th May, 1974, Roster Point No. 15 was meant for the members of the Scheduled Castes. It is also not disputed that the petitioner was the senior most member of the Scheduled Castes in the year 1983. But he was not considered for promotion, rather

the vacancy was filled up by granting promotion to the Candidate of General Category in total contravention of the notified government policy and resultantly this amounts to violation of Article 16(4) of the Constitution of India.

(6) The petitioner was promoted as Superintending Engineer on his turn in the year 1985 and has thereafter retired from service. Petitioner was entitled to be considered for promotion at Roster Point No. 15 against one of the six temporary and eight deputation vacancies. It is nowhere stated in the reply that these six temporary and 8 deputation vacancies were reduced or abolished at any given time after 1983. Thus, it is presumed that these vacancies remained available all along and are thus still available till date of filing of the last affidavit dated 25th October, 2008. The petitioner was entitled to be considered against Roster Point No. 15 in the year 1983 as a member of the Scheduled Castes which consideration has been denied to him.

(7) This petition is accordingly allowed. Respondents are directed to consider the petitioner for promotion as Superintending Engineer against Roster point No. 15 when the same was filled up and the petitioner be promoted accordingly. Under normal circumstances, I would have directed only for consideration, but since the petitioner already stands promoted as Superintending Engineer which means that he did not suffer from any disqualification. On granting promotion to the petitioner as Superintending Engineer against Roster Point No. 15, he be also considered for further promotion to the post of Chief Engineer as and when the vacancy of Chief Engineer was available for Roster Point No. 15 or for the reserved category candidate and if the petitioner is found otherwise suitable and eligible for promotion, he may be granted such promotion. It is, however, directed that all such promotions shall be notional without any monetary benefits, but the salary of the petitioner shall be fixed by giving him the benefit of increments and pay revision etc., if any. Similarly, his retiral benefits will be re-determined. Let the entire exercise be completed within a period of four month and appropriate order be passed.

R.N.R.