(8) For the reasons aforesaid, the appeal is allowed, the judgment and decree of the first appellate Court is modified to the extent that the plaintiff's claim for promotion to the post of Sub Inspector of Police will be considered with effect from May 11, 1971, in the light of the observations made in the earlier part of this judgment. In all other respects, the judgment and decree of the first appellate Court are reversed, but with no order as to costs.

S.C.K.

Before Hon'ble J. L. Gupta, J.

MRS. NIRMAL MITTAL,—*Petitioner.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 9344 *of* 1989.

January 19, 1993.

Constitution of India, 1950—*Art.* 226/227—*Grant of special increment for employees undergoing sterlisation—Fixation of cut off date for making grant admissible is irrational—Haryana Government notification dated July* 20, 1981—*Classification on the basis of date of surgery is artificial and unconstitutional and petitioner entitled to grant of special increment—However, petition being belated benefit restricted to* 38 *months preceding the date of the petition.*

Held, that the object of issue of letter dated August 31, 1976 was to ensure that the Government employees who have two or three surviving children must undergo the sterlisation operation and those who do so will be given a special increment. For achieving this object, it is really not material as to when an employee has actually undergone the said surgery. All persons falling within the mischief of the Rule promulgated in the year 1976 are bound to undergo the operation. Once they do so, there is no basis for classifying them on the basis of the date of the issue of letter of July 20, 1981. The measure adopted by the Government is illustrative of the policy of Rod and Carrot. Those who have undergone the surgery prior to July 20, 1981 are sought to be dealt with by a rod while others who have undergone the surgery on or after July 20, 1981 become entitled to the benefit of special increment. Since every Government employee is governed by a uniform rule that he or his spouse has to undergo the surgery, all employees who have already undergone or are going to undergo the surgery in future, constitute one homogenous class. The date of surgery is of no material consequence. It really does not have any relation with

the object sought to be achieved. Consequently, they have a right to be treated alike. All of them are entitled to the grant of the special increment. The action of the Government in not giving them the benefit creates an artificial classification, which has no relation or nexus with the object for which the order was issued. Consequently, the provision contained in para (v) of the letter dated July 20, 1981 and the action in perpetuating it even by the subsequent circular issued in the year 1989 is violative of the provision contained in Articles 14 and 16 cannot be sustained.

(Para 10)

Held, that the circular had been issued by the Government on July 20, 1981, while these writ petitions were filed long thereafter. *Prima facie,* this objection is not wholly without basis. However, one cannot lose sight of the fact that the denial of the special increment results in a continuous loss to the petitioners. They are being continuously wronged. As such, the petitions cannot be dismissed on the ground of delay. However, the grant of benefit in pursuance to the declaration that the action is violative of Article 14 of the Constitution can be restricted to the period provided for the filing of a civil suit for arrears of salary.

(Para 14)

C. M. Chopra, Advocate, S. P. Jain, Advocate, *for the Petitioner.*

Sailendra Singh, Mahavir Sandhu, A. K. Malik, Advocates, Arun Nehra, Addl. A. G. Haryana,*for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) This order will dispose of Civil Writ Petition Nos. 7808, 9344 and 10958 of 1989, 3272, 11360, 11712, 11757, 14713 and 15031 of 1990 and 4322 and 8448 of 1991.

This bunch of 11 petitions raises a common question of law viz. Is the action of the State Government in declining the benefit of special increment to such Government employees as had undergone sterlisation prior to the issue of the Notification dated July 20, 1981 discriminatory and violative of Articles 14 and 16 of the Constitution ? A few facts necessary for the disposal of these petitions may be briefly noticed. Reference for this purpose may be made to the averments made by the petitioner in Civil Writ Petition No. 9344 of 1989.

(2) The petitioner herein is working as a lecturer in the State of Haryana. She is on deputation to the Union Territory of

Chandigarh and is posted as a lecturer in the Government College, Chandigarh. On August 31, 1976, the State of Haryana issued a Notification under the proviso to Article 309 of the Constitution in which it was *inter alia* provided that "no person who has more than two children and has not got himself or herself or his or her spouse sterlised or who, having not more than two children does not give an undertaking not to have more than two children" shall be liable to removal from service. In pursuance to this Notification the petitioner who had two children "underwent family planning operation at the age of 33 years in the year 1977 at Post Graduate Institute of Medical Education and Research, Chandigarh." A copy of the certificate issued by the Institute has been produced as Annexure P-2. On July 20, 1981, the Haryana Government issued an executive order in which it was *inter alia* provided that "Haryana Government employees who undergo sterlisation after having two or three surviving children may be granted a special increment in the form of personal pay not to be absorbed in future increases in pay either in the same post or on promotion to higher posts. The rate of personal pay would be equal to the amount of the next increment dut at the time of the grant of the next increment due at the time of the grant of the concession and will remain fixed during the entire service." The grant of this concession was subject to various conditions including that the Government employees must be within the reproductive age group i.e. a female Government employee must not be above 45 years and her husband must not be over 50 years of age. It was also provided that the operation must be conducted and the certificate must be issued by Government Hospital. Another condition which was laid down was that "the concession will be admissible only to the Government employees who undergo sterlisation operation on or after the date of issue of these orders." A copy of this order has been produced as Annexure P-3. The petitioner states that she made a representation against this circular but to no avail. A copy of the representation dated January 4, 1989 submitted by the petitioner has been produced as Annexure P-4.

(4) In continuation of the letter dated July 20, 1981, the State of Haryana issued another circular,—*vide* letter dated January 10, 1989 in which it was *inter alia* provided that "consequent upon the revision of pay scales from 1st January, 1986, the Haryana Government has examined the matter at length and it has now been decided that the Government employees who had undergone sterlisation on or before 29th April, 1987 and were already in receipt

of special increment may be granted double the rate of initial increment in the revised pay scale (made applicable with effect from 1st January, 1986) corresponding to the pre-revised in which the employee was initially granted special increment." A copy of this circular has been produced as Annexure P-5. The petitioner avers that soon after the issue of the circular at Annexure P-5 she submitted a representation on February 24, 1989, a copy of which has been produced as Annexure P-6. Having failed to get any favourable reply, she has approached the Court through the present petition. The action of the Government in declining to give her the increment has been challenged as being wholly arbitrary and violative of Articles 14 and 16 of the Constitution.

(5) A written statement has been filed on behalf of the State of Haryana by the Joint Director (Colleges). It has been stated by way of preliminary objection that the relief sought in the petition is for the recovery of money and the appropriate remedy for the purpose is by way of a civil suit. It has been further averred that the petition suffers from the vice of laches. On merits. it has been stated that by notification dated August 31. 1976, disqualifications have been prescribed for Government employees according to which a person who did not undergo the prescribed. Surgery was liable to be removed from service. So far as the circular dated July 20, 1981 (Annexure P-3) is concerned, it has been averred that "the said incentive is prospective in nature and the same cannot be applied retrospectively. As the petitioner got herself sterlised in the year 1977,—(*vide* Annexure P/2) without being induced to do so, she is not entitled the incentive contained in Government orders at Annexure P-3". The respondents further maintain that the benefit in the circular is admissible only to those persons "who underwent operation in expectation of an incentive.....". Accordingly, the action is not violative of Articles 14 and 16 of the Constitution. It is also maintained that the representations submitted by the petitioner were wholly lacking in merit and were thus rejected by the State.

(6) Arguments in these cases were addressed only by Mr. C. M. Chopra, learned counsel appearing on behalf of the petitioner. Mr. Arun Nehra, Additional Advocate General, Haryana, appeared for the respondents.

(7) The primary contention raised by the counsel for the petitioner was that there was no valid basis for denying the benefit of the special increment to the petitioner and the action

was thus violative of Articles 14 and 16 of the Constitution. The claim was controverted on behalf of the respondents.

(8) In India, the population is increasing at an alarmingly rapid pace. As a result, the efforts for economic growth are being continuously neutralised. For obvious reasons, this is a matter of concern for every one in this country. The decision of the Government of Haryana to amend the Service Rules and to make it compulsory for every Class III Government employee, who had more than two children to either himself or herself undergo the sterlisation operation or to have his or her spouse sterlised, was a laudable act. It was a step in the right direction. Every State in this country, nay, every employer would do well to emulate this example and make a similar provision. This single measure may solve many problems that this country faces today. The fact that a number of employees underwent surgery in pursuance to this provision shows that they recognised purpose and object for which the rule had been promulgated. While this Rule was in force, the Government issued the circular on July 20, 1981. The Government decided to grant a special inrcement in the form of personal pay to those employees who undergo the sterlisation operation after having two or three surviving children. On the revision of pay scales, the rate of special increment was ordered to be doubled. However, as already noticed in this circular, it was provided that "the concession will be admissible only to the Government employees who undergo the sterlisation operation on or after the date of the issue of these orders." Was this condition valid ?

(9) Article 14 of the Constitution guarantees equality before the law. It ensures equal protection of laws. It is undoubtedly correct that Article 14 permits reasonable classification provided it has a nexus with the object which is sought to be achieved. In other words, those who are similarly placed have a right to be treated equally. It is in this background that the question raised in the present cases has to be examined.

(10) By notification dated August 31, 1976, the State Government had amended the Class III Rules and made it incumbent on the employees who had more than two children to undergo the sterlisation operation either themselves or to have their spouses sterlised. Those who did not have more than two children had to given an undertaking not to have any more children. A failure

in this behalf was to render the Government employee liable to removal from service. The result is that an employee having more than two children had to undergo the operation while those who had only two children had to give an undertaking. A failure to undergo surgery or a violation of the undertaking was to entail the penal consequence of removal from service. This provision has not been abrogated till today. It continues to be in force. Thus, a Government employee who has more than two children, is bound to undergo the operation while those who have only two children are precluded from having any more. The object of this Notification is to ensure that after August 31, 1976, the Government employees should not have children beyond the prescribed number. While the rule was in force, the Government decided to provide a further incentive in the form of a special increment. The object of issue of this letter is to ensure that the Government employees who have two or three surviving children must undergo the sterlisation operation and those who do so will be given a special increment. For achieving this object, it is really not material as to when an employee has actually undergone the said surgery. All persons falling within the mischief of the Rule promulgated in the year 1976 are bound to undergo the operation. Once they do so, there is no basis for classifying them on the basis of the date of the issue of letter of July 20, 1981. The measure adopted by the Government is illustrative of the policy of Rod and carrot. Those who have undergone the surgery prior to July 20, 1981, are sought to be dealt with by a rod while others who have undergone the surgery on or after July 20, 1981 become entitled to the benefit of special increment. Since every Government employee is governed by a uniform rule that he or his spouse has to undergo the surgery, all employees who have already undergone or are going to undergo the surgery in future, constitute one homogenous class. The date of surgery is of no material consequence. It really does not have any relation with the object sought to be achieved. Consequently, they have a right to be treated alike. All of them are entitled to the grant of the special increment. The action of the Government is not giving them the benefit creates an artificial classification which has no relation or nexus with the object for which the order was issued. Consequently, the provision contained in para (v) of the letter dated July 20, 1981 and the action in perpetuating it even by the subsequent circular issued in the year 1989 is violative of the provision contained in Article 14 and cannot be sustained.

(11) An identical matter had come up for consideration even earlier in Civil Writ Petition No. 7911 of 1989. While allowing this

petition,—*vide* order dated August 25, 1992, I had observed as under :—

> "All the persons, who have either themselves undergone the sterlisation operation or whose spouses have undergone the surgery, contribute to promote the objective of the State Government. They form one class. The condition based on the date of undergoing the sterlisation operation does not provide any basis for rational classification in the present case."

(12) I am informed that this decision was accepted by the State of Haryana and was not challenged by filing any appeal etc. There appears to be no reason for taking a different view in these cases.

(13) Before parting with the judgment, it is apt to consider the two preliminary objections raised in the written statement filed on behalf of the respondents. Firstly, it has been averred that the petitioners raise a pure claim for money and, therefore, the petitioners should be relegated to the alternative remedy of a civil suit.

I am unable to accept this contention. While it is correct that a writ Court does not normally entertain a pure claim for money, the position in the present case is entirely different. The petitioners have challenged the constitutional validity of a circular issued by the Government. For this purpose, a writ petition is the only appropriate remedy. The monetary benefit is only consequential. In such a situation, the writ petition is fully competent and the petitioners cannot be relegated to the remedy of a civil suit.

(14) Secondly, it has been contended that the writ petition is belated. The circular had been issued by the Government on July 20, 1981, while these writ petitions were filed long thereafter. *Prima facie*, this objection is not wholly without basis. However, one cannot lose sight of the fact that the denial of the special increment results in a continuous loss to the petitioners. They are being continuously wronged. As such, the petitions cannot be dismissed on the ground of delay. However, the grant of benefit in pursuance to the declaration that the action is violative of Article 14 of the Constitution can be restricted to the period provided for the filing of a civil suit for arrears of salary.

(15) As a result, the stipulation contained in paragraph (v) by which the benefit of special increment was restricted to those Government employees who undergo sterlisation operation on or after July 20, 1981 is declared unconstitutional. Accordingly, the respondents are directed to refix the petitioners' pay my treating them as entitled to the grant of special increment. However, the payment of arrears of salary shall be confined to a period of 38 months proceding the date of the filing of the petition. In the circumstances of the case, there will be no order as to costs.

R.N.R.

Before : *Hon'ble A. L. Bahri & V. K. Bali, JJ.*

SHRI DAULAT RAM,—*Petitioner.*

versus

THE PRESIDING OFFICER, LABOUR COURT, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 17287 *of* 1991

February 25, 1992.

Constitution of India, 1950—*Art.* 226 *and* 227—*Industrial Disputes Act,* 1947—*S.* 25 *(h)—Labour Court upheld petitioners' retrenchment order,*—vide *award dated September* 11, 1982—*Thereafter respondent decided to fill* 4 *posts of peons—Did not appoint petitioner despite demand notice—Award of Labour Court dated September* 31, 1990 *declining claim of petition to post under section* 25*(h)—Whether previous award of Labour Court not hairing been challenged and becoming final operates as* resjudicata—*Held That right of workman to reemployment has no connection to legality of order of retrenchment—Impugned award of Labour Court cannot be sustained.*

Held, that principle of *resjudicata* does not apply to the facts of the case as far as award dated September 11, 1982, passed by the Labour Court is concerned, which merely related to legality of the order of retrenchment passed. That order is not being reviewed by the petitioner when he approached the Labour Court second time for relief under section 25(h) of the Industrial Disputes Act for re-employment on account of new vacancies being there. The right of the workman, who has been retrenched, to get re-employment has no connection with the legality of the order of retrenchment passed. It is assumed that the workman was retrenched. It is only then that he can claim re-employment. The Labour Court in the impugned