

## CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MRS. DEVINDER BRAR,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1518 of 1968.

February 25, 1969.

*Constitution of India (1950)—Articles 16 and 311—Post created to accommodate a particular person—Appointment of that person on the post—Whether valid—Such appointment—Whether hit by Article 16—Temporary Government servant—Order simpliciter terminating his services—Whether can be challenged.*

*Held*, that under the Constitution, no post can be created just to accommodate some person howsoever prominent or outstanding he or she may be. The posts in Government departments or offices are created for administrative exigencies and in the interest of the official work. They are not created to accommodate particular persons. If there is a necessity of creating a post and manning it, it should be thrown open to all eligible candidates after prescribing the qualifications which the candidates aspiring to hold that post should possess. To appoint a particular person alongwith the creation of the post and debarring other eligible candidates to compete for the same, directly contravenes the fundamental rights of the other eligible candidates guaranteed by Article 16(1) of the Constitution. If such a post was really necessary for carrying on the work of the department, it should have been thrown open to all eligible candidates. It cannot be filled by mentioning in the order creating the post that it had been created only to accommodate a particular person. Such an appointment is based on favouritism and smacks of arbitrariness and dictatorship and is violative of the fundamental right of the other eligible candidates. To concede such a power to the Executive is to violate the inviolable fundamental right guaranteed by Article 16 of the Constitution (Para 12)

*Held*, that where the services of a temporary Government servant are terminated because of non-availability of a post and the order is an order simpliciter without casting any stigma on his work, conduct, integrity or character, etc., that order is not open to challenge. (Para 10)

*Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ order or direction be issued quashing the orders of the Secretary to Government, Punjab, Education Department, Chandigarh, and the Joint Director of Sports (YP) Sports Wing of Education Department, Punjab, dated 24th April, 1968, and 6th April, 1968, terminating the services of the petitioner and also the order of the Director of Public Instruction, Punjab, Chandigarh, dated 29th May, 1967, appointing Respondent No. 4 as District Sports Officer, (W), and for ordaining Respondents No. 1, and 2 to treat the petitioner as having been retained in service against the post which was created by order of the Governor, dated 30th March, 1968.*

ABNASHA SINGH, ADVOCATE, for the Petitioner.

S. K. JAIN, ADVOCATE, for the ADVOCATE-GENERAL, (PUNJAB).

M. R. AGNIHOTRI AND I. K. MEHTA, ADVOCATES, for Respondent No. 4

JUDGMENT

TULI, J.—The petitioner was appointed District Sports Officer (Women) in the Punjab State Sports Department in the grade of Rs. 250—25—500 in a temporary capacity with effect from 18th June, 1965 (forenoon). The appointment was made in a leave arrangement purely on a temporary basis. Her selection was made by a Selection Committee consisting of:—

- (1) Secretary, Labour, Printing and Sports Departments, Punjab, Chandigarh;
- (2) Director, Sports and Youth Programmes, Punjab, Chandigarh; and
- (3) Assistant Director Sports (W), Punjab, Chandigarh;

in the meeting held on 31st May, 1965. According to the petitioner, eleven candidates were called for interview, one of them being Miss Manjit Walia, respondent 4. This allegation has been denied by Miss Manjit Walia who has stated that she was never called nor did she apply for the job. Five candidates appeared before the Committee out of whom the petitioner was selected. At the time the petitioner entered service, there were four District Sports Officers (W) already in service in the State of Punjab, their names being as under :—

- (1) Mrs. Jasbir Kaur.
- (2) Mrs. Gurcharan Bajwa.
- (3) Mrs. Surinder Dhir.
- (4) Mrs. Harjeet Gill.

The tenure of the petitioner was extended from time to time without a break in service and the last extension was granted to her with effect from 9th June, 1966 (forenoon), as a result of the termination of the services of Mrs. Jasbir Kaur, with effect from 8th June, 1966. The extension granted to the petitioner on 9th June, 1966 was “till a regular appointments made by the Departmental Selection Committee against the post” and so it was in a temporary capacity. According to the return, the petitioner was not appointed in the vacancy of Mrs. Jasbir Kaur, because her appointment was

not considered to have been made regularly as no advertisement had been made by the Government and only those candidates, whose applications were pending with the department in connection with the interview held for the post of District Sports Officer (W) advertised in 1963, were called for interview.

(2) On 17th March, 1967, the petitioner made an application to the Director, Public Instruction (Sports), Punjab, for being made permanent against the vacancy of Mrs. Jasbir Kaur and in reply thereto she was informed as under :—

“You are advised to compete alongwith other candidates for regular appointment against the post of District Sports Officer (W) as and when the posts of District Sports Officers (W) are advertised by the Government.”

In April, 1967, she made an application to the Secretary to Government, Punjab, Education Department, for regularisation of her appointment against the permanent vacancy caused by the termination of the services of Mrs. Jasbir Kaur. In that application she described her qualifications and achievements as under :—

- “(1) Graduate.
- (2) Holder of Diploma in Physical Education, Punjab University.
- (3) Qualified Coach in Athletics from the National Institute of Sports, Patiala.
- (4) Represented Punjab State in Gymnastics, Athletics and Kabaddi.
- (5) Winner of Silver Medals in Gymnastics and Kabaddi at Nationals.
- (6) Distinguished positions in Athletics, Hockey, Basket-Ball, Kho-Kho at College, District, University, State and Division Meets.”

In the said application, she also stated that she appeared in May, 1965 before the Departmental Committee consisting of the Secretary, Sports Department, Director of Sports and Assistant Director of Sports (W) and that her selection had been approved by the Minister Incharge, Sports Department. No action was taken by the authorities on this application. It is stated in the return that no regular Departmental Selection Committee was constituted in May, 1965 when the petitioner was interviewed. Being a gazetted officer, her appointment had to be got approved from the Minister Incharge.

Sports, and this did not mean that she had been selected by a regular Departmental Selection Committee.

(3) Comrade Bhan Singh Bhaura, M.L.A., asked certain questions in the Punjab Legislative Assembly on 23rd February, 1968, which concerned the petitioner. The Chief Minister informed the House that the services of the petitioner could not be regularised by the Government as she had not been appointed either through the Punjab Public Service Commission or on the recommendations of the Departmental Selection Committee. Apparently, there is a difference between the petitioner on the one hand and respondents 1 to 3, on the other, with regard to the status of the Committee that made the selection of the petitioner in May, 1965. According to the petitioner, it was the Departmental Selection Committee but according to the respondents it was not a regular Departmental Selection Committee implying thereby that it had been constituted on an *ad hoc* basis.

(4) During her service the petitioner performed her duties to the entire satisfaction of the authorities and was given excellent remarks for her work, one of them for the month of August, 1967, being as under :—

“Excellent work. She has taken keen interest in organising maximum of tournaments on the girls side and also helped in organising District as well as Divisional tournaments at Jullundur.”

These remarks were conveyed to the petitioner by the Director of Public Instruction, Punjab,—*vide* memorandum No. Sports-Steno/DDS(C)/68/1023, dated 30th January, 1968.

(5) On the re-organisation of the Punjab State with effect from 1st November, 1966, Mrs. Harjeet Gill was provisionally allocated to the State of Haryana and the remaining three District Sports Officers (W), including the petitioner, were provisionally allocated to the State of Punjab. On 10th January, 1968, the petitioner made an application to the Chief Minister (with a copy to the Excise and Taxation Minister) in which apprehension was expressed that Mrs. Harjeet Gill might be re-allocated to the State of Punjab which reversion would adversely affect the petitioner's interests. A prayer was made that her interests may be protected till the creation of new posts in the Sports Department. In the return it is stated that no action could be taken on this application of the petitioner

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because Mrs. Harjeet Gill, being a permanent employee, had a prior right to be absorbed in case she was finally allocated to Punjab. The petitioner was only a temporary employee appointed against a temporary leave vacancy and thus had no right to the post. On 8th February, 1968, the Punjab Education Department put up a proposal to the Government for the sanction of additional posts of District Sports Officer including two posts of District Sports Officers (W) for the districts of Bhatinda and Amritsar. These posts were, however, not created, but on 30th March, 1968, one additional temporary post of District Sports Officer (W) was sanctioned by the order of the Governor of Punjab, which ran as follows :—

“The Governor of Punjab is pleased to accord sanction to the creation of a temporary post of District Sports Officer (Women) in the grade of Rs. 250—25—500 from the date of entertainment of the post to 28th February, 1969, to accommodate Miss Manjit Walia, who is an outstanding Athlete, subject to the condition that the expenditure involved does not exceed the Budget grant (Plan) under the head “39—Misc. Social and Development Organisation—E-I—Sports—Establishment of Coaching Camps.”

It is significant to note that the new post was created to accommodate Miss Manjit Walia.

(6) On April 7, 1968, the petitioner received the following telegram from the Director of Public Instruction, Punjab :—

“Officers from Haryana Sports Department joined duties on final allocation 1st April, 1968 (forenoon) your services are accordingly terminated above date stop orders follow.”

On 9th April, 1968 the petitioner received the confirmation of the above telegram by post. The petitioner handed over charge of her post of District Sports Officer (W) at Jullundur on 15th April, 1968 and Mrs. Harjeet Gill was posted in her place with effect from 16th April, 1968. On 19th April, 1968, the petitioner made an application to the Chief Minister, Punjab, complaining of the hardship caused to her by the termination of her services. In the said application she made a prayer for her appointment to the newly created post. This application remained unacknowledged.

(7) Vide memorandum No. Sports-E-DCI-68/3773, dated 24th April, 1968, Miss Manjit Walia was appointed as District Sports Officer (W) in the Sports Wing of the Education Department, in the

grade of Rs. 250—25—500 plus usual allowances admissible under the Government rules from time to time at Rs. 250 per mensem on an *ad hoc* basis for a period of six months against a temporary post of District Sports Officer (W). Her appointment was made subject to the approval of the Punjab Public Service Commission. The petitioner was re-employed as a District Sports Officer (W) in a short leave vacancy which expired on 30th April, 1968.

The petitioner has challenged the order terminating her services as illegal for the following reasons :—

- (i) Petitioner's termination was made effective retrospectively, that is, with effect from 1st April, 1968, whereas she was not relieved from duty till 15th April, 1968.
- (ii) On the date order 'J' was issued, one new post of District Sports Officer (W) had been created. The petitioner applied for her absorption against the said post,—*vide* her application, dated 19th April, 1968 (Annexure 'K'). Her application was not considered and appointment order was issued to respondent No. 4 on 24th April, 1968. Petitioner's earlier application, dated 10th January, 1968 (Annexure 'H') was also ignored.
- (iii) The right guaranteed by Article 16(1) of the Constitution of India includes—
  - (a) 'the right to make an application for any post under the Government, and also the further right to be considered on merits for the post for which an application has been made'. (A.I.R. 1962 Supreme Court 602 at 604 (Para 5). The right of equality of opportunity in the matter of employment has thus been denied to the petitioner.
- (iv) The appointment of respondent 4 was irregular. No applications for the post were invited. The Punjab Public Service Commission was not consulted in this connection. Her selection was not made by the Departmental Selection Committee. The very words of the order sanctioning the post show that the order was *mala fide*.
- (v) The petitioner had put in about three years' approved service as District Sports Officer."

(8) The return has been filed by Shri Dalip Singh, Assistant Secretary to Government, Punjab, Education Department, in which it has been emphasised that the petitioner was only a temporary employee appointed against a temporary leave vacancy and thus had no right to the post. The post of District Sports Officer (W) to accommodate Miss Manjit Walia was created on the advice of the Finance Department because she was an outstanding athlete. The appointment of the petitioner, being on *ad hoc* basis, could be terminated without assigning reasons. Miss Manjit Walia is an outstanding athlete of international repute and accordingly the Government sanctioned an additional temporary post of District Sports Officer (W) to accommodate her. The petitioner could not claim appointment to a permanent post as a matter of right. The post of additional District Sports Officer (W) was created only for an outstanding athlete of international fame and that post could not be offered to the petitioner. It is admitted that the appointment of Miss Manjit Walia is subject to the approval of the Public Service Commission.

(9) Miss Manjit Walia has also filed a return in which she has enumerated her achievements as under :—

- “1. Gold Medals in 100 metres, 200 metres and 80-metre Hurdles in International, National Universities, States and Zones.
- (2) High Jump and Long Jump in States, Zones and Inter-Zones.
- (3) Represented India in Asian Games held at Bangkok in the year 1966 and was awarded Bronze Medal, bracketted with Silver Medal in 80-metre Hurdles, with new records of Asian Countries (India also).
- (4) Seventh place in all world Universities Games held at Tokyo (Japan) in 80-metre Hurdles in the year 1967.
- (5) Gold Medal in Indo-German meet held at Delhi in 80-metre Hurdles in the year 1967.
- (6) Gold Medal in Indo-Ceylon meet in Ceylon in 1966.

Year 1968—

Gold Medals in 100 metres, 200 metres, and 80-metre Hurdles and Panthet line at Faridkot, Punjab State meet.

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Punjab State meet North Zone meet at Hissar.

Punjab State meet Inter-Zone meet at Delhi.

Gold Medal in 80-metre Hurdles in National Games at Jullundur.

Member of Indian Relay Team."

The only other objection taken is that the petitioner has no *locus standi* to maintain the writ petition as no right vests in her and none has been infringed.

(10) The learned counsel for the petitioner has submitted that the petitioner had been serving the Department since 18th June, 1965, without a break and it was her right to be absorbed in the permanent vacancy caused by the termination of the service of Mrs. Jasbir Kaur, and in any case, on the return of Mrs. Harjeet Gill to the State of Punjab, the post newly created on 30th March, 1968, should have been given to her. Inasmuch as she was not considered for that post and that post had been earmarked for Miss Manjit Walia, her fundamental right of equal opportunity guaranteed by Article 16(1) of the Constitution, has been violated. The termination of her service is, therefore, illegal and the order terminating her services is liable to be set aside. The learned counsel for the respondents has, on the other hand, argued that the two matters, that is, one with regard to the termination of services of the petitioner and the other with regard to the appointment of Miss Manjit Walia should be dealt with separately as one has no connection with the other. The termination of services of the petitioner is in order as she was a temporary employee whose services could be terminated at any time on the ground that there was no post available for her because the posts of District Sports Officer (W) in the State of Punjab had been reduced from four to three as a result of the reorganisation of the State and Mrs. Harjeet Gill, who had been provisionally allocated to the State of Haryana, came back to the Punjab and there were three permanent officers for those three posts. The petitioner was holding a temporary post as long as Mrs. Harjeet Gill, was in Haryana. On her return to the State of Punjab, there was no post available in which the petitioner could be absorbed. The order terminating her services is an order simpliciter and does not cast any stigma on her work, conduct, integrity or character etc., her services were not terminated



because she was not found fit but because there was no post available for her. In these circumstances, I am of the view that the order terminating her services is not open to challenge.

(11) The creation of one additional post to accommodate respondent 4, Miss. Manjit Walia, cannot be considered to be available for absorption of the petitioner for the simple reason that it had been created only to accommodate Miss. Manjit Walia, because of her being an outstanding athlete of international fame. If Miss Manjit Walia had not to be accommodated, possibly this additional post might not have been created. It is not, therefore, possible to hold that the petitioner should have been accommodated in that post.

(12) The appointment of Miss. Manjit Walia, was, however, quite illegal as, in my opinion, in our present set-up under the Constitution, no post can be created just to accommodate some person howsoever prominent or outstanding he or she may be. The posts in Government departments or offices are created for administrative exigencies and in the interest of the official work. They are not created to accommodate particular persons. If there is a necessity of creating a post and manning it, it should be thrown open to all eligible candidates after prescribing the qualifications which the candidates aspiring to hold that post should possess. To appoint a particular person along with the creation of the post and debarring other eligible candidates to compete for the same, directly contravenes the fundamental rights of the other eligible candidates guaranteed by Article 16(1), of the Constitution. The Punjab Education Department had in fact put up the proposal to the Government for creating two posts of District Sports Officers (W), for the districts of Bhatinda and Amritsar, which proposal was not accepted. Instead of that one additional temporary post of District Sports Officer (W) was sanctioned by the order of the Governor of Punjab. If this post was really necessary for carrying on the work of the department, it should have been thrown open to all eligible candidates including the petitioner and respondent 4, it could not be filled in the manner it has been done by mentioning in the order creating the post that it had been created only to accommodate Miss. Manjit Walia. Such an appointment is based on favouritism and smacks of arbitrariness and dictatorship and is violative of the fundamental right of the other eligible candidate. To concede such a power to the Executive is to violate the inviolable fundamental right guaranteed by Article 16 of the Constitution.

(13) It was held by their Lordships of the Supreme Court in *Banarsidas and others v. State of Uttar Pradesh and others* (1) as under:—

- “It is open to the appointing authority to lay down the requisite qualifications for recruitment to Government service and it is open to that authority to lay down such pre-requisite conditions of appointment as would be conducive to the maintenance of proper discipline amongst Government servants. If persons already under Government employment on part-time basis have shown themselves not to be amenable to proper discipline in Government offices, it is open to Government not to appoint such persons to the permanent cadre of service because such persons cannot be said to be as efficient as those who have excellent records of service and have shown greater sense of responsibility to their employers.

Article 16 of the Constitution is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government. Like all other employers, Government are also entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government.

Selection for appointment in Government service has got to be on a competitive basis and those whose past service has been free from blemish can certainly be said to be better qualified for Government service than those whose record was not free from any blemish.

This judgment thus lays down that the opportunity for service must be afforded to all eligible persons although the Government has the right to pick and choose from amongst the candidates offering themselves for employment and that the selection for appointment in Government service has got to be on competitive basis. In the instant case the post of District Sports Officer (W), is not such a specialised post which can only be filled in by an athlete of the achievements of Miss. Manjit Walia. This post had been creditably

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(1) A.I.R. 1956 S.C. 520.

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held by the petitioner during the time she remained in service and is also being held by the other three officers, namely, Mrs. Gurcharan Bajwa, Mrs. Surinder Dhir and Mrs. Harjeet Gill, who have no achievements like those of Mrs. Manjit Walia. It cannot, therefore, be said that Miss. Manjit Walia, alone was the person who could be appointed in that post. Equal opportunity of competing should have been given to the petitioner and other eligible candidates and in so far as they have been denied that opportunity, the selection of respondent 4 for the post cannot be held to be valid.

(14) Their Lordships of the Supreme Court in *Krishan Chander Nayar v. The Chairman, Central Tractor Organisation and others*, (2), observed as under :—

“It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matters of employment of appointment to any office under the State, contained in Article 16(1) of the Constitution. So long as the ban subsists, any application made by the petitioner for employment under the State is bound to be treated as waste-paper. The fundamental right guaranteed by the Constitution is only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application has been made. Of course, the right does not extend to being actually appointed to the post for which an application may have been made.”

According to this authority, the petitioner had the right to make the application for the post of District Sports Officer (W), and the right to be considered on merits for that post. She has been deprived of that right and, therefore, her grievance is valid. The only relief she is entitled to is a direction to respondents 1 to 3 to consider her application on merits for that post but it is not possible for me to hold that she should have been given the post which had been specially created only for Miss. Manjit Walia, respondent 4, because the Governor of Punjab might not have created that post if the object was not to accommodate Miss. Manjit Walia. The recommendation of the Government to create two posts of District Sports Officers (W), for

(2) A.I.R. 1962 S.C. 602.

Bhatinda and Amritsar was turned down which shows that there was in fact no necessity of any post being created. Even if it is assumed that the post was created in due course, it cannot be said that if selection from eligible candidates had been made, the petitioner must have been selected for the post. She had to compete with other eligible candidates and would have been appointed to the post only if she had been selected by the appointing authority either through the Punjab Service Commission or through the Departmental Selection Committee.

(15) In *the High Court, Calcutta and another v. Amal Kumar Roy and others* (3), their Lordships of the Supreme Court observed as under :—

“Equal opportunity contemplated by Article 16(1), does not mean getting the particular post for which a number of persons may have been considered. So long as the plaintiff, along with others under consideration, had been given his chance, it cannot be said that he had not equal opportunity along with others, who may have been selected in preference to him. Where the number of posts to be filled is less than the number of persons under consideration for those posts, it would be a case of many being called and few being chosen. The fact that the High Court made its choice in a particular way cannot be said to amount to discrimination against the plaintiff.”

In the light of this judgment the petitioner would have had no cause for grievance if the post had been first created and then the eligible candidates including her and respondent 4 had been considered for the post. She has now a legitimate grievance because the Governor of Punjab, with a closed mind, created the post only to accommodate Miss Manjit Walia.

(16) Their Lordships of the Supreme Court in *B. N. Nargarajan and others v. State of Mysore and others* (4); observed as under (in para 7 of the report) :—

“Mr. Nambiar in this connection also relied on Articles 15 and 16 of the Constitution. He urged that if the executive

(3) A.I.R. 1962 S.C. 1704.

(4) A.I.R. 1966 S.C. 1942.

is held to have power to make appointments and lay down conditions of service without making rules in that behalf under the proviso to Article 309, Articles 15 and 16, would be breached because the appointments in that case would be arbitrary and dependent on the mere whim of the executive. We are unable to hold that Articles 15 and 16, in any way lead us to this conclusion. If the Government advertises the appointments and the conditions of service of the appointments and makes a selection after advertisement, there would be no breach of Article 15 or Article 16, of the Constitution because everybody who is eligible in view of the conditions of service would be entitled to be considered by the State."

According to this judgment, it is the duty of the Government to advertise the appointments and conditions of service and to make a selection after considering the eligible candidates on merits. This has not been done in the instant case and, therefore, in my opinion the appointment of respondent 4 made by order, dated 30th March, 1968, and letter, dated 24th April, 1968, is not valid.

(17) The learned counsel for the respondents has relied upon the observations of Sodhi, J., in the Full Bench judgment of this Court in *Dr. Kartar Singh Rai v. State of Punjab and another* (5), which are to the following effect :—

"The State Government in exercise of its executive powers under Article 162 of the Constitution of India has a right to make appointments to various offices and grant promotions from time to time as it might think proper. A Government servant holds his office during the pleasure of the President or the Governor of the State, as the case may be, and the only limitations laid down on the exercise of that power of the Government are as given in Article 311 of the Constitution or Article 16, thereof. \* \* \* \* \* Article 16, forms part of the same code of constitutional guarantees as given in Articles 14 and 15 of the Constitution of India and supplements them.

It is only one of the instances of the application of the general rule of equality so far as services under the State or the Union are concerned. This guarantee of equality in the absence of **any** statutory rules relating to selection to a post by departmental promotion is violated only where the appointing authority brings in arbitrariness in the exercise of its executive powers and denies to any individual officer in the same class and similarly situated his right to be considered for that post. \* \* \* \* \*

There is no dispute that Article 16(1) of the Constitution guarantees equal opportunity not only in the matter of initial appointment to a service but also in regard to future promotion to higher posts, but at the same time no civil servant has a claim to ask for a selection post as of right. It is a prerogative of the competent authority to give an officer promotion or refuse the same provided it does not act in the exercise of its executive powers in any arbitrary manner. This guarantee of equality under Articles 14, 15 and 16 of the Constitution, [as held by their Lordships of the Supreme Court in *Banarsidas and other v. State of Uttar Pradesh and others* (6),] does not take away the right of the Government to pick and choose proper persons when it is intended to fill up a civil post from out of a number of officers. \* \* \* \* \*

It is a mistaken approach to think that in case of every appointment or recruitment to a service or promotion, the State should first invite applications."

Even according to these observations of the learned Judge the Government has no power to create an extra post for a particular person. The learned Judge has emphasised that the guarantee of equality is violated where the appointing authority brings in arbitrariness in the exercise of its executive powers and denies to any individual officer in the same class and similarly situated his right to be considered for that post. This is exactly what has happened in this case. A post was created only for Miss Manjit Walia, although

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it could and can held by various other persons like the petitioner and the other three officers who are holding similar posts. It was not a post which only Miss Manjit Walia, could hold because of her any special qualifications. Narula, J. in that very Full Bench judgment observed as under :—

“The fundamental right under Article 16 of the Constitution would become wholly illusory and would be reduced to a mockery if the Government could be permitted to say that in a particular case they had made up their mind to appoint a particular person to a newly created post for any reason whatsoever, and that, therefore, they refused to consider the written application of another duly qualified and eligible person merely because he was at one time junior to the person sought to be appointed though he may be better qualified and may have had a cleaner service record. Article 16, as already stated, does not confer a right on anyone to be appointed to any particular post. The only rights of a citizen are : (i) to apply and (ii) to be considered on merits. The latter part of the petitioner’s fundamental right has been clearly infringed in this case.”

These observations aptly apply to the facts of this case. The petitioner’s application for the post was pending at the time the post was created and even after its creation she laid a claim to it on 19th April, 1968, but her claim was not at all considered. The Governor with a closed mind had made the appointment of Miss Manjit Walia. The appointment of Miss Manjit Walia must, therefore, be held to be invalid and has to be set aside.

(18) For the reasons given above, the writ petition is accepted in part. The prayer for quashing the orders terminating the services of the petitioner Annexure ‘J’ to the writ petition is declined while the prayer for the quashing of the appointment of respondent 4, a copy of which is Annexure ‘L’ to the writ petition, is accepted. In view of divided success, I make no order as to costs.

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R.N.M.