states that the deponent is the Officer Commanding to whom the case of the appellant should have been referred by the Criminal Court in accordance with the provisions of section 124 of the Act read with section 549 of the Code of Criminal Procedure. Although a period of five months has elapsed since the affidavit was filed, Wing Commander Suri has not made a claim that the trial of the appellant should have been by a Court-martial. And Wing Commander Suri's failure in that behalf is understandable. The appellant was admittedly on leave from his Unit on the day of the occurrence and the victims of the offence alleged against him were persons not subject to Military, Air Force or Naval law. He was tried along with four others, his fifth co-accused having died before the case came up for trial. All his co-accused were persons not subject as aforesaid. It would thus be seen that the facts of the case are such as may, well have persuaded the higher Air Force authorities not to take any action with reference to the provisions of section 124 of the Act. Under the circumstances, I do not think the failure of the courts below in not observing the provisions of section 549 of the Code of Criminal Procedure and the rules made thereunder amounts to any illegality vitiating the trial, especially as no prejudice is shown to have been caused to the appellant in consequence, but would hold that it is a mere irregularity curable by what is contained in section 537 of the Code. I am accordingly of the opinion that the case be sent back to the Division Bench for hearing of the appeal on merits.

HARBANS SINGH, J.—I agree.

JINDRA LAL, J.—I also agree.

K.S.K.

FULL BENCH

Before R. S. Narula, R. S. Sarkaria and S. C. Mital, JJ.

SHAMSHER SINGH,—*Petitioner*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

Civil Writ No. 1890 of 1966

February 19, 1970

Constitution of India (1950)—*Articles* 14, 15 *and* 16—*Scope of*—*Article* 15(3)—*Provisions of*—*Whether can be invoked for construing and determining the*

scope of Article 16(2)—*Provision of law squarely falling within ambit of Article* 15(3)—*Whether can be struck down merely because it may also amount to discrimination on the ground of sex.*

Held, per majority (*Sarkaria and Mital, JJ. Narula, J. Contra.*) that the scheme and the setting of Articles 14, 15 and 16 of the Constitution of India, particularly under a common caption, and their language unmistakably show that they belong to one family. While Article 14 can be called the genus, Articles 15 and 16 are its species. Article 14 is the basic Article which guarantees right to equality before law in a general way. It is of very wide amplitude. It ensures equal treatment to persons in similar circumstances both in the privileges conferred and in the liabilities imposed by the law, and thus prevents discrimination between one person and another, if as regards the subject-matter of the legislation they are similarly situated. Article 15(1) guarantees the same right of equality by prohibiting discrimination only on the ground of religion, race, caste, sex, place of birth or any of them. Whereas Article 14 is applicable to all persons, Article 15(1) reserves that guarantee for citizens only, and touches only one aspect of the general guarantee contained in Article 14, by affording protection against discrimination. Hence Articles 14, 15 and 16, being the constituents of a single code of constitutional guarantees, supplementing each other, clause (3) of Article 15 can be invoked for construing and determining the scope of Article 16(2). And, if a particular provision squarely falls within the ambit of Article 15(3), it cannot be struck down merely because it may also amount to discrimination solely on the ground of sex. Only such special provisions in favour of women can be made under Article 15(3), which are reasonable and do not altogether obliterate or render illusory the constitutional guarantee enshrined in Article 16(2).

(Paras 8 and 19)

Held, (*per Narula, J. Contra.*), that whereas Article 14 of the Constitution would not be offended in case of different laws being made for men on the one hand and women on the other in matters which have a rational relationship to the classification on basis of sex, such a classification is expressly prohibited in respect of any employment or office under the State by clause (2) of article 16. Though discrimination on grounds of race, caste, sex, etc., in regard to matters mentioned in sub-clauses (a) and (b) of clause (2) of article 15 is prohibited, yet special provision being made in favour of women and children in respect of those two matters is specifically permitted by clause (3) of article 15. Constitution is an organic whole and the principle of harmonious construction must be applied to the interpretation of constitution provisions. That principle cannot, however, be stretched to imply that an exception carved out to the purview of a particular article should also be extended to the purview of another article, though the Constitution makers expressly avoided doing so.

Hence provisions of clause (3) of Article 15 cannot be invoked for restricting the scope of application of clause (2) of Article 16 of the Constitution.

(Paras 8, 19, 22, 25 and 26)

Case referred by the Hon'ble Mr. Justice Ranjit Singh Sarkaria, to a Division Bench for decision of an important questions of law involved in the case. A Division Bench consisting of the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice Ranjit Singh Sarkaria, again referred the case to a Full Bench for important questions to be answered in the case...A Full Bench consisting of the Hon'ble Mr. Justice R. S. Narula, the Hon'ble Mr. Justice R. S. Sarkaria and the Hon'ble Mr. Justice S. C. Mital, sent the case back after deciding the law point involved in the case.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus *or any other appropriate writ, order or direction be issued ordaining the respondents to grant 25 per cent special pay to the male Block Education Officers from the same date on which the special pay was granted to lady Block Education Officers to remove discrimination and inequality on the ground of sex.*

ABNASHA SINGH AND J. L. GUPTA, ADVOCATES, for the Petitioner.

S. K. JAIN, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB) (Respondents 1-2).

G. C. MITTAL, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA (Respondents 3-4).

ORDER OF FULL BENCH

SARKARIA, J.—The question referred to this Full Bench is: "whether the provisions of clause (3) of Article 15 can be invoked for construing and determining the scope of clause (2) of Article 16 of the Constitution, and if so, to what extent and in what kind of cases"?

(2) Some material facts giving rise to this reference may first be noted :

(3) Prior to the 12th of May, 1963, in the united State of Punjab, there were two branches of the Punjab Education Service, Non-gazetted (Class III) School Cadre; in the grade of Rs. 110—8—190/10—250. One was exclusively manned by men and the other by women. The members of both the Branches were either employed on teaching work or on inspection work. By a Memorandum No. 1965-ED-III(2E)-61|8123, dated 21st|27th March, 1961, the Government of Punjab granted special pay equivalent to 25 per cent of basic pay but not exceeding Rs. 50 per month, to the Women's Branch, who were posted as Assistant District Inspectresses of Schools. Subsenquently (per Memorandum No. 1|49-63-Imp-Cell, date 9th|10th April, 1963) the Education Department in the field of School-cum-Inspection was reorganised. The Assistant District Inspectors and the Assistant District Inspectresses were designated as Block Education Officers and unified cadre came into

existence with effect from May 12, 1963. After the above reorganisation, the Block Education Officers, both males and females, have to perform identical duties. Their scales and responsibilities are the same. The posts as between male and females Block Education Officers are interchangeable.

(4) Shamsher Singh petitioner, a male Block Education Officer, has moved this Court by a petition under Article 226 of the Constitution, alleging that this amounts to discrimination solely on the ground of sex and, as such, is violative of Article 16(2) of the Constitution.

(5) The stand taken by Respondents 1 and 2 in the written statement is that the women members of the Service having been granted more pay on administrative grounds, such a grant does not amount to discrimination only on the ground of sex within the contemplation of Article 16(2) ; that even if it does, such a special provision could be justifiably made for women officers in view of clause (3) of Article 15 of the Constitution.

(6) The Articles of the Constitution relevant for this discussion are 14, 15 and 16. They, along with Articles 17 and 18 (which deal with abolition of untouchability and titles, respectively) have been grouped together under the common caption "Right to Equality". They read as follows :—

"*Article* 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

(7) Sardar Abnasha Singh, learned counsel for the petitioner, contends that clause (3) of Article 15 cannot control or derogate from the specific guarantee against discrimination solely on the ground of sex contained in clause (2) of Article 16. Had that been the intention, a provision similar to clause (3) of Article 15 should have been repeated in Article 16 also. It is stressed that the words "nothing in this article" in clause (3) of Article 15 were clear and unambiguous and delimit the scope of that clause to anything said in that Article only. They cannot, proceeds the argument, be twisted and strained to mean "nothing in this Constitution". To illustrate

his point, Mr. Abnasha Singh has referred to clause (4) of Article 15, which, according to the counsel, is a provision similar to clause (4) of Article 16. Support has been sought from certain observations made by Shri Durga Das Basu in his Commentary on the Constitution of India, Fourth Edition, page 478, where the learned author has observed as follows :—

> "It is to be noted that there is no provision in Article 16 corresponding the clause (3) of Article 15. The result is, that for purposes of employment under the State, though reservation in favour of backward classes is permissible under clause (4) of Article 16, no such reservation is possible in favour of women; nor is any other discrimination in favour of women possible, e.g., relaxation of rules of recruitment or standard of qualifications or the like."

(8) The scheme and the setting of Articles 14, 15 and 16, particularly under a common caption, and their language unmistakably show that they belong to one family. While Article 14 can be called the genus, Articles 15 and 16 are its species. Article 14 is the basic Article which guarantees right to equality before law in a general way. It is of very wide amplitude. It ensures equal treatment to persons in similar circumstances both in the privileges conferred and in the liabilities imposed by the law, and thus prevents discrimination between one person and another, if as regards the subject-matter of the legislation they are similarly situated. Article 15(1) guarantees the same right of equality by prohibiting discrimination only on the ground of religion, race, caste, sex, place of birth or any of them. Whereas Article 14 is applicable to all persons, Article 15(1) reserves that guarantee for citizens only, and touches only one aspect of the general guarantee contained in Article 14, by affording protection against discrimination.

(9) As pointed out by their Lordships of the Supreme Court in ***Gazula Dasaratha Rama Rao*** v. ***State of Andhra Pradesh*** (1) Article 15, in one respect, is more general than Article 16, because its operation is not restricted to public employment; it operates in the entire field of State discrimination. In ***General Manager, Southern Railway*** v. ***Rangachari*** (2) their Lordships of the Supreme Court were considering the scope and effect of Article 16(4). Gajendragadkar J.,

(1) A.I.R. 1961 S.C. 564.
(2) A.I.R. 1962, S.C. 36.

J., (as His Lordships then was) speaking for the Court, made these illuminating observations :—

> ".... ....it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other."

(10) Though the question for determination before the Supreme Court in *Rangachari's case* (2) was different, yet the principle enunciated therein for interpreting these Articles will be of great assistance for answering the question posed for this Bench. The very language of clause (3) of Article 15 is clear enough to show that it is a proviso to the general guarantee against discrimination contained in clauses (1) and (2) of that Article. Further, there is ample authority in support of the proposition that the validity of a law apparently offending the general Article 14 can be upheld if it falls within the abmit of clause (3) of Article 15. In *Yasuf Abdul Aziz* v. *State of Bombay* (3) the validity of Section 497 of the Indian Penal Code was challenged on the ground that it contravenes the provisions of Article 14. Repelling this contention, Bose J., speaking for the Court, observed :—

> "Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two Articles read together validate the impugned clause in Section 497, Penal Code."

In *Datiatraya* v. *State of Bombay* (4) the question for determination was, whether the provisions of Section 10(1)(c) of the Bombay Municipal Boroughs Act and the Rules made thereunder for reservation of seats for women for their election to the Jalgaon Municipality were *intra vires*. The contention was that they offended Articles 14, 15 and 16 of the Constitution. On behalf of the State, it was contended in reply that these were special provisions covered by clause

(3) A.I.R. 1954 S.C. 321.
(4) A.I.R. 1953 Bom. 311.

(3) of Article 15. Chagla C.J., speaking for the Division Bench, enunciated the law on the point, as follows :—

> "Article 15(3) is obviously a proviso to Article 15(1) and proper effect must be given to the proviso. It is true that in construing the proviso one must not nullify the section itself. A proviso merely carves out something from the section itself, but it does not and cannot destroy the whole section. The proper way to construe Article 15(3) ..... is that whereas under Article 15(1) discrimination in favour of man only on the ground of sex is not permissible, by reason of Article 15(3) discrimination in favour of women is permissible, and when the State does discriminate in favour of women, it does not offend against Article 15(1). Therefore, as a result of the joint operation of Article 15(1) and 15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women. In this particular case, even if in making special provision for women by giving them reserved seats the State has discriminated against men, by reason of Article 15(3) the Constitution has permitted the State to do so even though the provision may result in discrimination only on the ground of sex. Therefore, in our opinion, the legislation we are considering does not offend Article 15(1) by reason of Article 15(3)."

(11) If I may say so with respect, the above is a correct statement of the law on the point, if clauses (1) and (2) of Article 15, as held in *Dattatraya's* case ibid (4) cover the entire field of State discrimination, including the field of public employment specifically dealt with in Article 16, then it will not be wrong to say that, in a way, it overlaps and supplements what is said in Article 16. It follows as a necessary corollary therefrom that the scope and the content of the exception in clause (3) will extend to the entire field of State discrimination, including that of public employment. Thus construed, clause (3) of Article 15 is to be deemed as a special provision in the nature of a proviso qualifying the general guarantees contained in Articles 14, 15(1), 15(2), 16(1) and 16(2).

(12) The above view is in consonance with what is called the principle of harmonious construction of the Constitution. A Constitution is an organic whole. It has to be read as a whole. It does not mean one thing at one time and another subsequently. It is,

therefore, not only proper but imperative to construe one provision in the light of the other cognate provisions. "An author", says Maxwell in The Interpretation of Statutes, Eleventh Edition, "must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it ..... It cannot be assumed that Parliament has given with one hand what it has taken away with the others." Similarly, in *Moss* v. *Ephick* (5) at page 468, it was laid down that where there are two sections dealing with the same subject-matter, one section being unqualified and the other containing the qualification, effect must be given to the section containing the qualification. When in clause (3) of Article 15, which covers the entire field of discrimination, the framers of the Constitution clearly stated that special provisions may be made in favour of women (even if they amount to discrimination in their favour against men), it would have been needless tautology to repeat the same clause in Article 16, which is only an instance of the same right which has been guaranteed in general and wider terms by Article 15(1).

(13) It is manifest that the word 'for' in Article 15(3), in the context, connotes 'in favour of'. Webster's Dictionary, *inter alia*, gives these meanings of the word 'for' :—

> "2. To the advantage of; on behalf of; with reference to the needs of. 3. In favour of. 4 Specially appropriate or adapted to."

(14) The Concise Oxford Dictionary also says that 'for' means "in defence, or in support or favour of". The authors of the Constitution were aware of the need for uplifting women and children in our society and were particularly solicitous of their welfare. It was with the intention to protect the interests of women and children, which did not get their due under the social conditions then prevailing, that clause (3) of Article 15 was incorporated in the Constitution.

(15) For the reasons aforesaid, I respectfully disagree with the contention of Mr. Abnasha Singh and the view of the learned author of Basu's Commentary on the Constitution of India, as this view

(5) (1910) 1 K.B. 465.

proceeds on too narrow a construction of Articles 14, 15 and 16, dividing the same into water-tight compartments.

(16) Having seen that Article 15(3) can be invoked for construing and determining the scope of Article 16(2), the further question that remains to be considered is the extent to which such invocation can be done. Again, on this point, it will be useful to recall the observations of Chagla C.J., in *Dattatrayas case, ibid* (4). It was there argued that Article 15(3) must be read to mean that only those special provisions for women are permitted which do not result in discrimination against men. It was also said that there are certain facilities which only women can enjoy, and to the extent that those facilities can only be enjoyed by women, provision can be made for those facilities, and with regard to such a provision it could not possibly be said that it discriminated against men. An illustration was given with regard to maternity homes. Similar arguments have been addressed by Mr. Abnasha Singh on behalf of the petitioner in the case before us. These arguments were negatived by Chagla, C.J., with the following observations :—

> "In our opinion, if that was the object of enacting Article 15(3), then Article 15(3) need not have been enacted at all because if the special provisions for women contemplated by Article 15(3) were only those provisions which did not discriminate against men, then no proviso to Article 15(1) was necessary."

(17) I am in respectful agreement with the aforesaid observations. While it is neither possible nor desirable to lay down an abstract proposition as to what kind of special provisions derogating from the constitutional guarantee contained in Article 16(2) can be made under clause (3) of Article 15 in favour of women, it can be said that such a provision should not give unreasonable benefit or protection, at the cost of men to women, which will make the constitutional guarantee against discrimination solely on the ground of sex enshrined in Article 16, nugatory. While construing similar exceptions contained in Articles 15(4) and 16(4), the Supreme Court in *M. R. Balaji* v. *State of Mysore* (6), at page 664, observed:—

> "There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Article 16(4), care would be taken not to

(6) A.I.R. 1963 S.C. 649.

provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Article 15(4), reservation made under Article 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. In this connection it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary."

(18) The above remarks of the Supreme Court will fully apply to a special provision made under Article 15(3). What is true with regard to Articles 15(4) and 16(4) is equally true in regard to Article 15(3). Again, in *Devadasan* v. *Union of India* (7), it was emphasised that a proviso or an exception cannot be so interpreted as to nullify or destroy the main provision. In view of these settled principles, it can safely be said that unreasonable provisions in favour of women cannot be made under Article 15(3) which would, in effect, either efface the guarantee contained in Article 16(2) or make it illusory.

(19) For the foregoing reasons, I would answer the question referred to the Bench as follows :—

"Articles 14, 15 and 16, being the constituents of a single code of constitutional guarantees, supplementing each other, clause (3) of Article 15, can be invoked for construing and determining the scope of Article 16(2). And, if a particular provision squarely falls within the ambit of Article 15(3), it cannot be struck down merely because it may also amount to discrimination solely on the ground of sex. Only such special provisions in favour of women can be made under Article 16(3), which are reasonable and do not altogether obliterate or render illusory the constitutional guarantee enshrined in Article 16(2),"

Narula, J. It is with deep and sincere regret that I express my inability to persuade myself to agree with the view expressed

(7) A.I.R. 1964 S.C. 179.

by my learned brother Sarkaria, J. in the most scholarly and lucid judgment prepared by him. I admit that on the question referred to this Full Bench there is room for difference of opinion and though I have very great respect for the view taken by my learned brother, which appears to me to have appealed to him at least partly from a point of view of convenience of administration, the solemn duty with which I feel myself charged is to ensure that the scope of a fundamental right conferred by any provision contained in Part III of the Constitution is not allowed to be belittled or restricted and that such a right is not permitted to be diluted by reference to a similar other provision in the same chapter which the Constituent Assembly in its wisdom expressly abstained from applying to the right in question.

(21) The relevant facts giving rise to this reference have already been detailed in the judgment of my learned brother with requisite clarity and need not be unnecessarily repeated. I may, however, state at the very outset that I am expressing this opinion in answer to the abstract question referred to this Bench and may not be understood to have even impliedly recorded any finding in connection with the particular facts of this case as to the applicability of article 16(2) of the Constitution thereto. I am expressing the opinion contained in this judgment on the assumption that the special allowance in question has been refused to the petitioner only on the ground of sex and that, but for that ground, the Government would have granted the allowance in question to him as a matter of right. I am further assuming for the purposes of this reference that the grant of a special allowance to a Government servant is a matter in respect of the employment of the person concerned under the State. The answer which I propose to return to the question referred to us is—

> "The provisions of clause (3) of article 15 cannot be invoked for restricting the scope of application of clause (2) of article 16 of the Constitution."

I now proceed to give my reasons for holding that opinion.

(22) If article 16 was confined to its first clause and if clause (2) had not been there, discrimination betwen classes of Government servants on the ground of sex woud not have been invalid as it is settled law that there can be reasonable classification of the employees for the purposes of employment or appointment because article 16 of the Constitution is only an incident of the application of

the concept of equality enshrined in article 14 thereof; and article 16 merely gives effect to the doctrine of equality in the matter of appointment and employment. Article 16(1) does not bar a reasonable classification of employees. This was so held by their Lordships of the Supreme Court in *S. G. Jaisinghani* v. *Union of India and others* (8), and in *the State of Mysore and another* v. *P. Narasinga Rao* (9). Clause (2) of article 16 appears to me to be an exception to the well recognised rule of discrimination being permitted between different classes of persons who are not similarly situated. Though I entirely agree with my learned brother that while article 14 can be called the genus of the articles in the Constitution relating to equality and articles 15 and 16 are its species, whereas article 14 would not be offended in case of different laws being made for men on the one hand and women on the other in matters which have a rational relationship to the classification on basis of sex, such a classification is expressly prohibited in respect of any employment or office under the State by clause (2) of article 16. Again, though discrimination on grounds of race, caste, sex etc. in regard to matters mentioned in sub-clauses (a) and (b) of clause (2) of article 15 is prohibited, yet special provision being made in favour of women and children in respect of those two matters is specifically permitted by clause (3) of article 15. I am in respectful agreement with the view expressed by D. D. Basu (now Basu, J. of the Calcutta High Court) in his 'Commentary on the Constitution of India' (Volume 1, page 538—1965 Edition) to the effect "that for purposes of employment under the State, though reservation in favour of backward classes is permissible under clause (4) of article 16, no such reservation is possible in favour of women; nor is any other discrimination in favour of women possible, e.g., relaxation of rules of recruitment or standard of qualifications or the like." Same considerations cannot, in my opinion, apply to matters relating to access to shops, public restaurants, hotels and places of public entertainments or use of wells, tanks etc. as would apply to matters in respect of any employment or office under the State. It may indeed be necessary in the interest of women themselves that special provision may be made in their favour in the matters of access to places of public entertainments or use of tanks and bathing Ghats etc. But the Constitution makers appears to have consciously and deliberately kept equality of opportunity in matters relating to employment or appointment to any office under the State at a higher pedestal so as to avoid any possible heart-burning amongst members of the services which might

(8) A.I.R. 1968 S.C. 1427.
(9) A.I.R. 1968 S.C. 349.

be caused by making special provision in favour of women in matters relating to employment etc. I find great force in the contention of Mr. Abnasha Singh to the effect that had the Constitution makers the intention to make a provision similar to clause (3) of article 15 in the matter of the prohibition against discrimination in respect of employment etc., they would have carved out a similar exception in article 16 also as they did in case of the provision for discrimination in favour of backward classes by enacting clause (4) in article 16. I also agree with the learned counsel that the words 'nothing in this article' in clause (3) of article 15 cannot be construed to read (for the purpose of diluting the guarantee of equal opportunity in the matters of employment)—"nothing in this or the succeeding article" or "nothing in this Constitution". Straining of the express language of clause (3) of article 15 in this respect does not appear to me to be justified by any valid consideration. It was observed in the majority judgment of their Lordships of the Supreme Court in *L. C. Golak Nath and others* v. *State of Punjab and another* (10) that the doctrine of necessary implication cannot be invoked if there is an express provision or unless but for such implication the article will become otiose or nugatory. It has not even been contended, nor can in fairness it be contended at all, that the guarantee contained in clause (2) of article 16 of the Constitution would become otiose or nugatory if it is not restricted by invoking clause (3) of article 15.

(23) The question of interpretation of article 16 of the Constitution came up recently before the Constitution Bench of the Supreme Court in *Triloki Nath Tiku and another* v. *State of Jammu and Kashmir and others* (11). While dealing with the scope of clause (4) of article 16 of the Constitution, Shah, J. who prepared the judgment of the Court, held that clause (4) provides a limited exception to the operation of the other clauses of article 16. He further observed as follows—

> "Article 16 in the first instance by clause (2) prohibits discrimination on the ground, *inter alia*, of religion, race, caste, place of birth, residence and permits an exception to be made in the matter of reservation in favour of backward classes of citizens."

(10) A.I.R. 1967 S.C. 1643.
(11) A.I.R. 1969 S.C. 1.

A little later in the same passage (paragraph 4 of the A.I.R. report), the learned Judge observed—

> "But for the purpose of article 16(4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent, place of birth or residence cannot be adopted, because it would directly offend the Constitution."

In paragraph 6 of that judgment, it was emphasised that the normal rule contemplated by the constitutional provision is equality between aspirants to public employment, but in view of backwardness of certain classes it would be open to the State to make a provision for reservation of appointments or posts in their favour. The view which I hold about the absolute guarantee contained in clause (2) of article 16 of the Constitution being subject only to the exceptions provided in causes (3), (4) and (5) of article 16 and to no other exception appears to find support from the above-mentioned observations in the judgment of the Supreme Court in *Triloki Nath Tiku's case.* (11) I am unable to find any observation in the earlier judgments of the Supreme Court to which reference has been made by any larned brother, which could be inconsistant with the view expressed by me. Reference to the guarantees of equal protection or equal opportunity contained in articles 14 and 15 of the Constitution has often been made while discussing the scope of article 16, but it does not appear to have ever been held that clause (3) of article 15 should be permitted to control the fundamental right contained in clause (2) of article 16 so as to virtually add a fourth exception to the three already contained in clauses (3) to (5) of article 16 in the matter of te guarantee enshrined in clause (2) of that article.

(24) I have no quarrel with the principles laid down for interpreting constitutional provisions in various judgments. Article 14 is the general article. Articles 15 and 16, however, cover their separate specified fields within the general field covered by article 14. It can easily be envisaged that invidious discrimination offending against general guarantee contained in article 14 may nevertheless be held valid if it helates to the subject-matter of article 15 and falls in clausees (3) or (4) thereof or if it falls within the scope of article 16 and is covered by the exceptions contained in clauses (3) to (5) of that article. But the reverse of that proposition cannot be true. It cannot, in my opinion, be successfully

argued that what is made specifically invalid by article 16 can be upheld by reference to something stated in and specifically restricted to article 15, and so on, in the reverse order. In *Dattatraya Motiram more* v. *State of Bombay* (4). Chagla, C.J., was not dealing with a case under article 16. The matter in that case related to a special provision for women giving them reserved seats in an election to a municipal committee. It was in that context that the learned Chief Justice (as he then was) observed that something which falls within article 15(3) cannot be considered to offend against the general guarantee contained in clause (1) of article 15. The correctness of that view cannot be doubted. But that does not furnish an answer to the question which has been referred to us. I am unable to appreciate how the exception to clauses (1) and (2) of Article 15 contained in clause (3) of that Article can be made applicable to the guarantee contained in clause (1) or clause (2) of Article 16 as the field covered by the two Articles is not only entirely different, but mutually exclusive.

(25) I agree with Sarkaria, J., that a constitution is an organic whole and the principle of harmonious construction must be applied to the interpretation of constitution provisions. That principle cannot, however, in my opinion, be stretched to imply that an exception carved out to the purview of a particular article should also be extended to the purview of another article, though the Constitution makers expressly avoided doing so. The amendment of Article 15 of the Constitution comprised in the adding of clause (4) thereto instead of leaving it to the interpretors of the Constitution to bring in by implication the contents of Article 16(4) into Article 15 shows that the Constitution makers were not avoiding tautology while doing so, but were making clear and unambiguous provision in matters relating to fundamental rights. What has been observed by their Lordsips of the Supreme Court in *M. R. Balaji and others* v. *The State of Mysore and others* (6) (at page 664) has reference only to a comparison between the provisions of clause (4) of Article 15 on the one hand and clause (4) of Article 16 on the other. I cannot construe anything stated in that judgment to suggest that their Lordships of the Supreme Court were, in any manner, inclined to import from Article 15(4) anything into Article 16 which is not already contained in clause (4) of the last mentioned Article. In fact, Gajendragadkar, J. (as he then was), while preparing the judgment of the Court, specifically noticed in *M. R. Balaji's* case that Article

15(4) was added by the Constitution (First Amendment) Act, 1951, so as to bring Articles 15 and 29 in line with Article 16(4). The learned Judge observed that Article 15(4) has to be read as proviso or an exception to Articles 15(1) and 29(2). It is significant to note in this connection that Article 29(2) of the Constitution has been specifically mentioned in clause (4) of Article 15. It has never been said that if Article 29(2) had not been mentioned in Article 15(4), the guarantee contained in the former Article would still have been controlled by the exception contained in Article 15(4). If a provision contained in one Article could also, by invoking the principle of harmonious construction, be read into another one, it would have been wholly unnecessary to make a mention of Article 29(2) in Article 15(4) and the object of making the provision of Article 29(2) subject to Article 15(4) of the Constitution could have been achieved by resorting to the principle of harmonious construction.

(26) For the foregoing reasons, I would answer the question referred to us in the manner already indicated, that is to say, the provisions of clause (3) of Article 15 cannot be invoked for restricting the scope of application of clause (2) of Article 16 of the Constitution.

S. C. Mittal.—I agree with my learned brother Sarkaria, J.

ORDER OF THE FULL BENCH

(28) In view of the majority decision, the answer to the question referred to this Full Bench is as follows :—

> "Articles 14, 15 and 16, being the constituents of a Single code of constitutional guarantees, supplementing each other, clause (3) of Article 15 can be invoked for construing and determining the scope of Article 16(2). And, if a particular provision squarely falls within the ambit of Article 15(3), it cannot be struck down merely because it may also amount to discrimination solely on the ground of sex. Only such special provisions in favour of women can be made under Article 15(3), which are reasonable and do not altogether obliterate or render illusory the constitutional guarantee enshrined in Article 16(2)."

K.S.K.