

FULL BENCH

Miscellaneous Civil.

Before R. S. Narula, C.J., Prem Chand Jain, Gurnam Singh,
M. R. Sharma and R. N. Mittal, JJ.

HARPAL SINGH ETC.,—Petitioners.

versus

THE UNION TERRITORY OF CHANDIGARH AND ANOTHER,—
Respondents.

Civil Writ No. 977 of 1977

August 31, 1977.

Punjab Police Rules, 1934—Rules 13.1, 13. (and 19.14—Constitution of India 1950—Article 16—Rule 19.14—Whether violative of Article 16.

Held, that the Police Constables have to perform duties of various kinds. The object of rule 19.14 of the Punjab Police Rules 1934 is that they should disengage themselves from other duties and have a short course of instruction under the watchful eye of the selectors so that really deserving Constables are selected for training at the Police Training College. There is an indication in the rule that the candidates who are nearing the age limit should be given preference and in other respects they should be selected according to the result of the competition. There are limited vacancies in the Police Training College and if the Constables are sent to it regardless of their ability to successfully attend the course, it would mean the wastage of public efforts. Even otherwise when a large number of candidates are available, it is open to the administrative authority to evolve a reasonable method for selecting the very best of persons for receiving further training in an institution. The rule does not envisage selection at random but encourages the eligible Constables to compete with each other. In any service, there are the two conflicting interests—one of the employees and the other of the employer. The employees want promotion and higher emoluments of office and the employer desires that the service should be efficient. When these conflicting interests are governed by a statutory rule, a court which is called upon to determine its reasonability has to pay due regard to both the interests. This rule which treats all the Constables alike and enables them to show their merit, cannot be said to be unreasonable simply because the result of the competition is not to the liking of those who fail to make the grade. Articles 14 and 16 of the Constitution of India, 1950 require that

the case of every eligible person should be considered on the basis of the same principles and no more. If the policy for consideration is laid down in a rule and is properly administered, the rule cannot be held violative of these Articles. Rule 19.14 of the Rules aims at improving the efficiency of the service and has equal application to the cases of all enlisted Constables. It does not, therefore, violate Article 16 of the Constitution.

(Paras 11, 12 and 16).

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable writ, direction or order be issued, directing the respondents :—

- (i) to produce the complete records of the case ;
- (ii) the order at Annexure 'P-2' be quashed ;
- (iii) the respondents be directed to depute the petitioners for the Lower School Course ;
- (iv) Rule 19.14 be declared ultra vires Article 16 of the Constitution ;
- (v) this Hon'ble Court may pass any other order which it may deem just and fit in the circumstances of the case ;
- (vi) this Hon'ble Court also grant all the consequential reliefs in the nature of arrears of salary, seniority etc. etc. ;
- (vii) filing of the certified copies of the writ petition and the Annexures be dispensed with ;
- (viii) the costs of this petition be awarded to the petitioners :

Jawahar Lal Gupta, Advocate, for the Petitioners.

M. R. Agnihotri, Advocate with Y. K. Sharma, Advocate, for the Respondents.

JUDGMENT

M. R. Sharma, J.—

(1) The petitioners were recruited as Constables in the Union Territory of Chandigarh on the various dates mentioned in paragraph 2 of the petition. By virtue of the provisions of the Punjab Reorganisation Act, 1966, their conditions of service were governed by

Harpal Singh etc. v. The Union Territory of Chandigarh and another. (M. R. Sharma, J.)

the Punjab Police Rules, 1934 (hereinafter referred to as the Rules). On January 30, 1973, the Union Territory Administration issued a standing order laying down that the Constables should be deputed for the Lower School Course on the basis of a competitive test. Petitioners Nos. 5 to 7 filed Civil Writ Petition No. 1812 of 1976, which came up before R. N. Mittal, J. who disposed it of on September 12, 1976, in the following terms :—

“The learned counsel for the respondents has stated that the petitioners shall be considered for sending to the Lower School Course which is to commence in April, 1977 in accordance with the Punjab Police Rules in force at that time without taking into consideration the order dated 18th August, 1973 and that the respondents shall not promote any of the persons mentioned in Annexure ‘P-1’ to the post of Head Constable till October, 1977. In view of the aforesaid undertaking, the learned counsel for the petitioners does not press the writ petition. Consequently, the writ petition is disposed of accordingly with no order as to costs.”

Thereafter, petitioners Nos. 1 to 4, 6, 8, 11, 12 and 13 filed another Civil Writ Petition No. 7709 of 1976 in which the action of respondent No. 2 for deputing the Constables to the Lower School Course on the basis of a test introduced under the executive instructions was challenged. This petition came up for hearing before me and my learned brother S. S. Sidhu, J., on December 8, 1976. In accordance with the rule laid down in *Head Constable Sardul Singh v. Inspector General of Police, Punjab and others* (1), we ordered that the respondents shall consider the case of the petitioners for being sent to Lower School Course strictly in accordance with the rules and would not insist upon them to pass the test which has been provided under the executive instructions. The grievance of the petitioners is that whereas they were expecting that they would be considered and sent for the Lower School Course commencing on April 1, 1977, on the basis of their seniority and record of service, respondent No. 2 issued an order on March 13, 1977 directing that the petitioners should, alongwith others, join the Refresher Course organised in the Police Lines with effect from March 17, 1977. It is submitted that rule 19.1 of the Rules, which allows the authority to call upon the

(1) 1970 S.L.R. 505.

Constables at least 3 months before the admissions are made at the Police Training School for a Refresher Course of Drill and Instruction, at the end of which they have to be examined in competition, is violative of Article 16 of the Constitution. It is also submitted that since the selection has not been made prior to January 1, 1977, i.e., 3 months before the date of admission to the Police Training School, the respondents, "cannot now force the petitioners to go through the odium of competitive test especially when they have not been given the requisite training."

(2) In the return filed on behalf of respondents Nos. 1 and 2, it has been submitted that they have acted strictly in compliance with rules 13.1, 13.7 and 19.14 of the Rules. It is further submitted that the provisions of rule 19.14 of the Rules regarding the date, time and duration of the Refresher Course and the test are 'mandatory in the sense that the schedule has to be observed in chronometric exactitude' and if due to some emergent and important pre-occupations of the Administration, action could not be taken earlier, the duration and time schedule of the Refresher Course could be varied after consulting the Principal of the Police Training College, Phillaur which had been done in the instant case.

(3) Mr. J. L. Gupta, learned counsel for the petitioners, has submitted that it is open to this Court to determine the philosophy of a statutory rule and to strike it down as violative of Article 16 of the Constitution if it does not afford a public servant an opportunity of acquiring the necessary qualifications for further promotion at all stages of his career, especially when such qualifications can be obtained only in a departmentally run institution. He has further submitted that the process of promotion of a constable to a higher rank begins after he has passed the Lower School Course examination at Police Training College and rule 19.14 of the Rules to the extent it makes it incumbent on a police constable to attend a Refresher course of Drill and Instruction and thereafter to appear in a competitive examination, places unnecessary obstacles in his way to become eligible for promotion. According to him, a police constable, on his recruitment, has to undergo necessary training before he is brought on the rolls and, thereafter he has a right to be sent for passing the Lower School Course on the basis of his seniority

Harpal Singh etc. v. The Union Territory of Chandigarh and another (M. R. Sharma, J.)

and service record. In support of his submission, the learned counsel sought to derive support from the analogy of the following observations made by Tuli, J. who spoke for the Full Bench in *Sardul Singh's case* (supra):—

“It is contended on behalf of the respondent that when he becomes efficient, he will be sent for the Intermediate School Course but it may happen that at that time he is unable to qualify in that examination either because of advanced age or physical unfitness. In that case it will mean that such a Head Constable is condemned for ever to remain as a Head Constable and cannot seek promotion to the next higher rank. We are, therefore, of the opinion that it is inherent in rule 13.9 and a legitimate inference can be drawn from the language of this rule that every Head Constable on list ‘C’ has the right to be deputed for the Intermediate School Course on his turn and no obstacle can be placed in his way by any of the authorities because it is a necessary qualification prescribed by that rule and there is no other institution from where this qualification can be acquired. If a Head Constable could qualify himself by passing the Intermediate School Course from any other institution, no obligation would have been cast on the Government to afford him an opportunity to pass that course and thus acquire that qualification just as educational qualifications are prescribed which can be acquired by the candidate from any of the numerous institutions. Since this qualification cannot be acquired in any other way but by admission to the Police Training College, the Head Constable willing to undergo that course must be afforded an opportunity to do so. Since the number of seats for the Intermediate School Course is limited, the Head Constable can be sent in the order of seniority as stated hereinafter.”

On the second point, it is submitted that since the selection for attending the Refresher Course of Drill and Instruction had not been made three months before the date on which the selected constables were to be sent to the Police Training College, the selection made was contrary to the express words of rule 19.14. Such a selection had to be ignored and the petitioners had to be sent to the

Police Training College on the basis of their seniority and service record.

(4) On the other hand, Mr. M. R. Agnithotri, the learned counsel for the respondents, has submitted that rule 19.14 expressly provides that the eligible constables shall be called to the Line and given Refresher Course of Drill and Instruction in contra-distinction with the provisions of rule 13.9 relating to the selection of Head Constables for the Intermediate School Course and that the observations made by the Full Bench in *Sardul Singh's case* (supra) relating to the selection of constables for the lower School Course were in his favour. He has further submitted that rule 19.14 treated all the foot constables alike and a combined reading of the relevant rules shows, that the process of promotion of a constable to the rank of Head Constable commences on the day when his name is brought on the rolls. He has also submitted that rule 19.14 aims at introducing efficiency in the service and is not violative of Article 16. On the second point, it is urged that the provisions regarding the period of three months for Refresher Course of Drill and Instruction mentioned in this rule should be regarded as a directory provision only.

(5) Under the common law, where acts are of an official nature, or require the concurrence of official persons, a presumption arises in favour of their due execution. In "A Selection of Legal Maxims" by Herbert Broom 1973 Edition at page 642, it is stated as under :—

"In these cases the ordinary rule is, *omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium* — everything is presumed to be rightly and duly performed until the contrary is shown. The following may be mentioned as general presumptions of law illustrating this maxim : That a man, in fact acting in a public capacity, was properly appointed and is duly authorised so to act; that in the absence of proof to the contrary, credit should be given to public officers who have acted, *prima facie*, within the limits of their authority, for having done so with honesty and discretion."

(6) A Legislature stands on a much higher pedestal than an ordinary public servant. It is presumed to know the existing law.

Harpal Singh etc. v. The Union Territory of Chandigarh and another. (M. R. Sharma, J.)

including the Constitutional law and the evils which it seeks to remedy. In its case also a presumption arises that it acts in accordance with the Constitution. In *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and others*, (2), it was held that in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. This implies that a Court should not readily infer that a statutory rule is violative of the constitutional provisions. If at all an assumption has to be made, it has to be made in favour of its being in accordance with the Constitution; but if there is nothing on the face of the law or the surrounding circumstances of the case brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality may not be carried to the extent of always holding that there was some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

(7) The aforementioned observations apply with equal vigour to a case in which the validity of a service rule is challenged on the basis of Article 16 of the Constitution. The object of this Article is to ensure equality of opportunity for all citizens in matters relating to appointment to public offices. They have to be treated equally not only at the time of their initial entry into service but also at later stages of their service career. At the same time, it is open to the rule making authority to make a reasonable classification for different categories of public servants. The equality contemplated by this Article implies the accord of same treatment to the members of the same class of employees. Where an appointing authority selects some in preference to others and no discrimination in the mode of selection is made, this Article cannot be said to be violative, nor can anybody make any grievance where candidates offering themselves for employment under the State, or for promotion to the higher ranks are subjected to the same test. In *Sant Ram Sharma v. State of Rajasthan and others*, (3), it was held—

“If the State of Rajasthan had considered the case of the petitioner alongwith the other eligible candidates before

(2) A.I.R. 1958 S.C. 538.

(3) A.I.R. 1967 S.C. 1910.

appointments to the selection posts there would be no breach of the provisions of Articles 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts were actually made."

(8) What is necessary is that every eligible public servant should be considered on the basis of the same criterion. The criterion may not only include educational qualifications but also physical fitness, age, character, and antecedents and sense of discipline etc. Normally speaking, the rule making authority is expected to know the task before it and it is invested with a wide discretion to lay down the necessary qualifications for a post. It is not open to a Court to strike down the qualifications laid if they *prima facie* appear to be reasonable. At the same time, it does not debar a Court to strike down the qualifications laid if they appear to be discriminatory. In *Pandurangrao J. v. Andhra Pradesh Public Service Commission, Hyderabad*, (4), rule regarding recruitment to judicial service in Andhra Pradesh debarring persons not practising as Advocates of the High Court of that State to compete was struck down as discriminatory.

(9) The philosophy of rule 19.14 would have to be judged in the light of the aforementioned principles culled out from the authoritative pronouncements made by their Lordships of the Supreme Court.

(10) It now becomes necessary to make a brief survey of the Rules. Rule 13.1 of the Rules lays down that promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be made factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. Rule 13.7 lays down that list 'B' in form 13.7 shall be maintained by each Superintendent of Police and shall be divided into two parts, one relating to selection-grade constables and the other relating to

(4) A.I.R. 1966 S.C. 268.

Harpal Singh etc. v. The Union Territory of Chandigarh and another. (M. R. Sharma, J.)

constables considered suitable for drill and other special courses at the Police Training College. We are now informed that selection grade constables are no longer recruited and consequently only one list for the second category of constables is maintained. Selections are made from this list as and when vacancies occur for admission to the courses at the Police Training College. The rule lays down that ordinarily seniority in age shall be given prior consideration in making such selections irrespective of the date of admission to the list and care has to be taken that a constable borne on the list is not allowed to become over age for admission to the College before being selected. No constable is to be admitted to this list whose age is such that he cannot in the normal course be sent to the Police Training College before he attains the age of 30 years. Nor is a constable, who has failed to qualify at the Police Training College, readmitted to the list unless the Superintendent of Police and the Principal of the College are in agreement that he is deserving another chance for qualifying in that course. Rule 13.8 lays down that a list shall be maintained in card-index form of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to the rank of Head Constable. Out of this list, promotions to the rank of Head Constable shall be made in accordance with the principles described in sub-rules 13.1(1) and (2). The provisions regarding the training of foot constables are contained in Chapter XIX. Rule 19.1 emphasises that successful police work depends very largely on each individual officer acting correctly on his own initiative. It enjoins on the Superintendents of Police to give their attention to the training of all officers and men serving under them. The object of such training shall be to inculcate in police officers habits of physical health, activity, discipline, self reliance, observation, punctuality, sobriety, courtesy and straight forwardness of dealing in the execution of their work, as also a knowledge of the technical details of the work required of them. *Training shall be a continuous process carried on in the course of work.* Rule 19.2(1) lays down that except in exceptional circumstances, which shall be reported to the Deputy Inspector-General of Police of the Range, recruits shall not be passed into the ranks until they have undergone six months' training and instruction. Sub-rule (2) of this rule provides that instruction shall be given in a course of drill, as also at the Headquarters, as laid down in rule 19.10. Rule 19.3 provides for an examination of the recruits at the completion of the training. On passing this examination, the

recruits pass into ranks. But the service of a constable under three years' service is at any time liable to be terminated. Rule 19.6 lays down that every constable posted at a police station or an out post shall be called into lines annually for one month's training in drill and instruction at the Headquarters' school. Therefore, he has to be examined by a gazetted officer and if he fails to satisfy him, he is retained in the school for another month. Rule 19.8 provides for the establishment of a Headquarters' school and rule 19.9 lays down that the school be divided into two main portions for literate and illiterate constables. Rule 19.10 prescribes courses of study for literate and illiterate constables. The next important rule is rule 19.14 which is under challenge and reads as under :—

“19.14. The selection of constables made under rule 13.7 shall be made at least three months before the men are due at the Police Training School. It shall be made after the men competing have been called into lines and put through a short 'refresher' course of drill and instruction in the headquarters school, at the end of which they shall be examined in competition. After regard has been had to those candidates nearing the age limit, selection shall be made, as far as expedient, according to the result of this competition. The men selected shall be posted to police stations as assistants to station clerks or on similar duty until they are due to be sent to the Police Training School.”

(11) The Police Constables have to perform duties of various kinds. The object of this rule is that they should disengage themselves from other duties and have a short course of instruction under the watchful eye of the selectors so that really deserving constables are selected for training at the Police Training College. There is an indication in the rule that the candidates who are nearing the age limit should be given preference and in other respects they should be selected according to the result of the competition. Admittedly, there are limited vacancies in the Police Training College and if the Constables are sent to it regardless of their ability to successfully attend the course, it would mean the wastage of public effort. Even otherwise when a large number of candidates are available, it is open to the administrative authority to evolve a reasonable method for selecting the very best of persons for

Harpal Singh etc. v. The Union Territory of Chandigarh and another. (M. R. Sharma, J.)

receiving further training in an institution. The rule does not envisage selection at random but encourages the eligible constables to compete with each other. In any service, there are the two conflicting interests — one of the employees and the other of the employer. The employees want promotion and higher emoluments of office and the employer desires that the service should be efficient. When these conflicting interests are governed by a statutory rule, a court which is called upon to determine its reasonability has to pay due regard to both the interests. In *Ram Sharan v. The Dy. Inspector General of Police, Ajmer, and others* (5) the three tier system introduced in the police force resulted in some differential treatment in the case of promotions to the higher ranks. The argument about the system being violative of Article 16 was disposed of by the Supreme Court in the following words :—

“But it is urged that this has to be balanced against considerations of efficiency which have led to the evolving of the three tier system of promotion already referred to and therefore the system should not be struck down, simply because at times it may happen that a junior head constable may get promotion while a senior head constable in another range may have to wait. Balancing the various considerations mentioned above, therefore, it seems to us that the system in force in the State of Rajasthan evolved as it has been for the efficiency of the police in the State as well as for administrative convenience cannot be said of itself to deny equality before the law or to deny equality in the matter of employment in public service, even though at times it may happen, because of the system that a junior head constable in one range may get promotion as officiating Sub-Inspector while in another range a senior head constable may have to wait for some time. We are therefore not prepared to strike down this system as denying equality before the law or denying equality in the matter of employment in the public service, simply on the ground of these possible cases of hardship.”

(12) This rule which treats all the constables alike and enables them to show their merit cannot be declared as unseasonable simply

(5) A.I.R. 1964 S.C. 1559.

because the result of the competition is not to the liking of those who fail to make the grade. Articles 14 and 16 of the Constitution require that the case of every eligible person should be considered on the basis of the same principles and no more. If the policy for consideration is laid down in a rule and is properly administered, the rule cannot be held violative of these Articles as laid down by their Lordships of the Supreme Court in *Sant Ram Sharma's case* (supra).

(13) It is no doubt true that those Constables who join the service rather late may have smaller number of chances of competing for entry to the Police Training College but on that ground alone it cannot be said that the service rules treat them differently. When selection has to be made out of a very large number of candidates, it is open to the executive authorities to lay down qualification of age apart from the other qualifications. Rules 13.7 of the Rules which lays down an upper age limit of 30 years for a Police Constable to be brought on List B which in turn qualifies him for being sent to the Police Training College for training came up for consideration before a Full Bench of this Court in *Deputy Inspector General of Police, Ambala Range, Ambala, and another v. Shamsher Singh constable*, (6) and was declared to be constitutionally valid. My learned brother O. Chinnappa Reddy, J., after making an exhaustive survey of the rules spoke as under for the Full Bench :—

“It appears that the process of selection of Head Constable commences practically simultaneously with the enlistment of recruits as constables. The scheme of the Rule appears to be to select and appoint Head Constables at a very early age by putting the enlisted recruits through a rigorous training and drill from the very start and choosing the cream of them for promotion as Head Constables. It is as if everyone who is enlisted as a constable straight away becomes a candidate for promotion as Head Constable and undergoes training tests and examinations at several stages. If, before attaining the age of 30 he emerges successfully through the training, tests and examinations, he is promoted as Head Constable with chances of further promotion as Assistant Sub-Inspector, Sub-Inspector and Inspector. If

Harpal Singh etc. v. The Union Territory of Chandigarh and another. (M. R. Sharma, J.)

he does not, he remains as a Constable with chances of promotion into the Selection Grade of Constable and ordinarily, no more”.

Even in *Sardul Singh's case* (supra) relied upon by Mr. Gupta, the relevant rule relating to Constables was noticed by the Full Bench and it was observed :—

“In this rule, mention is made of selection grade constables but we are told that the category of selection grade constables has been abolished and there are only constables who are brought on List ‘B’ for being sent to the Lower school Course. List ‘A’ is maintained under rule 13.6 by each Superintendent of Police from amongst the constables eligible under rule 13.5 for promotion to a selection grade of constables. The number of names in the list is not to exceed twenty per cent of the establishment of the grade in the district. Out of the constables whose names are brought on List ‘A’, selection has to be made of those constables who are considered suitable as candidates for the Lower School Course. The names of the constables considered suitable for the Lower School Course are entered in List ‘B’ with the approval of the Deputy Inspector General of the Range. It is thus clear from this provision that every constable brought on List ‘A’ has no right to go for the Lower School Course. A method of selection has been provided for sending the constables on List ‘A’ for that course, that is, the suitability of each constable on List ‘A’ has to be seen by the Superintendent of Police of the district under whom he is working and has to be approved by the Deputy Inspector General of the Range. In that case the provision for selection has been made in the rule at stage of sending for Lower School Course. Those constables who successfully pass the Lower School Course and are considered eligible for promotion as Head Constables will be admitted to List ‘C’ under rule 13.8. It is thus evident that the second selection for being admitted to List ‘C’ starts after a Constable on List ‘B’ passes the Lower School Course. His admission to List ‘C’ will not be automatic thereafter but it will have to be considered whether he is fit for promotion to the rank of Head Constable.

For that purpose, the marking in sub-rule 13.5 (2) and the notes of the Superintendent of Police or furnished by gazetted officers under whom the Constable has worked, on his qualifications and character are to be taken into consideration when admitting him to List 'C' and promoting him as Head Constable."

(14) These observations do not bear out the contention of Mr. Gupta that the process of promotion of a constable begins after a police constable passes the Lower School Course. The Full Bench compared the phraseology employed in rule 13.7 and 13.9 and observed—

"The omission to make a provision for selection at the stage of sending the Head Constables for the Intermediate School Course in rule 13.9 like the one made in rule 13.7 leads to the conclusion that the omission by the rule making authority was deliberate and the only inference that can be drawn for this omission is that no Head Constable is to be deprived of his right to go for the Intermediate School Course in order to qualify himself for consideration or promotion to the next rank of Assistant Sub-Inspector of Police."

(15) A similar question came up for consideration before B. R. Tuli, J., in *Ram Labhaya, Assistant Sub-Inspector of Police and others v. The State of Punjab, and others* (7), and the learned Judge observed as under:—

"I do not consider that the change in the method of selection affects the Fundamental Rights of the Police Constables under Article 16 of the Constitution. Previously, it was the opinion of the Superintendent of Police concurred in by the Deputy Inspector-General of the range that prevailed on the basis of service record of each constable. Under the amended rules, the decision of the Departmental Promotion Committee is to prevail and that Committee is to be constituted by the Inspector-General of Police. In addition to tests in parade and general law, interview and

Harpal Singh etc. v. The Union Territory of Chandigarh and another. (M. R. Sharma, J.)

examination of records has also been provided so that it cannot be said that the service record of such constable will not be considered. Some method of selection has to be provided for because of the limited number of seats in the Police Training College at Phillaur as compared with the large number of constables employed in each district. The underlying idea is that only those constables should be selected for qualifying courses for further promotions who show promises of becoming good, efficient and honest police officers. The subjects prescribed for selection are quite relevant to the duties that will have to be performed by the constables after they obtain further promotions. In my opinion, therefore, this rule cannot be struck down on the ground of violation of Article 16 of the Constitution merely because the method of selection has been changed."

(16) In the face of these observations, it cannot be justifiably argued on behalf of the petitioners that they have a right to join the Police Training College without undergoing the process of selection contained in rule 19.14. This rule aims at improving the efficiency of the service and has equal application to the cases of all enlisted constables. It cannot be struck down as violative of Article 16 of the Constitution.

(17) The second point raised by Mr. Gupta does not deserve any serious attention. Rule 19.14 lays down that the constables should be put through a Refresher Course of drill and instruction in the Headquarters School, examined at the end of this course in competition and the selected for the course three months before they are due at the Police Training School. It is not disputed that all of them were put through the same course and examined in competition at its end. The only grievance made is that the selection had not been made three months before they were due at the Police Training School. If this argument is allowed to prevail, then the petitioners themselves would not be able to seek admission to the Police Training School. The petitioners, who participated in the short course in the hope of being selected, cannot be allowed to raise this argument in proceedings under Article 226 of the Constitution after they failed to make the grade.

(18) No other point was raised before us.

(19) For the reasons mentioned above, we find no force in this petition and order the same to be dismissed. No costs.

R. S. Narula, C.J.—I agree.

Prem Chand Jain, J.—I also agree.

Gurnam Singh, J.—So do I.

R. N. Mittal, J.—I concur.

N. K. S.

FULL BENCH

APPELLATE CIVIL

Before M. R. Sharma, S. S. Sidhu and A. S. Bains; JJ.

THAN SINGH AND OTHERS,—Appellants.

versus

NANDU ETC.,—Respondents.

Regular Second Appeal No. 1255 of 1967

September 9, 1977.

Punjab Pre-emption Act (1 of 1913)—Section 15—Suit for possession by pre-emption—True nature of a transaction which is apparently an exchange—Whether can be gone into by the Court in such suit—Pre-emptor—Whether can be allowed to lead evidence to prove such nature of the transaction.

Held, that (1) it is open to the plaintiff (pre-emptor) to establish that the transaction in a suit is in reality a sale and not an exchange or gift and that the Courts can enquire into the true nature of such a transaction. Under the Evidence Act also, there is no bar to lead evidence to prove certain transaction as a sale ;

(2) a vendor can defeat the right of the pre-emptor by all legitimate means ;

(3) if two views are possible, then the one which defeats the right of the pre-emptor has to be accepted ; and