
The Gujrat High Court held that the trial Court should have made endeavour to bring about reconciliation between the parties and if an attempt to reconciliation had failed, then the wife should have been given adequate opportunity to file written statement and put her case effectively. The High Court observed that has resulted in miscarriage of justice.

(25) Thus, in my considered view, the lower Court fell into an error in striking off the appellat husband's defence on May 13, 1992, and thereafter without framing issues and without giving an opportunity to the appellat-husband to adduce his evidence, he recorded the evidence of respondent wife on July 13, 1992, and in unwarranted hot haste decided the divorce petition in her favour.

(26) Resultantly, appeal is hereby allowed; trial Court's judgment and decree are set aside; case is remanded to the trial Court to frame issues on the basis of pleadings on record and decide it in accordance with law.

R.N.R.

Before Amarjeet Chaudhary, J.

JASPAL SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

C.W.P. 13271 of 1994

30th October, 1996

Punjab Recruitment of Sportsmen Rules, 1988—Rl. 2(d)(b)(ii)—Constitution of India, 1950—Arts. 14 & 16—Reservation of posts for Sportsmen—Rules defining 'Sportsmen' as persons who have represented the State of Punjab and secured 1st, 2nd or 3rd position either at State level or at National level sporting events—Distinction placed in definition of 'Sportsmen' is intra vires the Constitution—Reservation of 3 per cent posts is reasonable and bears rational nexus to the object sought to be achieved—Validity of rules upheld.

Held, that after considering and perusing the objects sought to be achieved by restricting the reservation to the sportsmen belonging to the State of Punjab who represented the State of Punjab and obtained 1st, 2nd or 3rd position either in a team or individual events and the Constitutional provisions, I have no doubt that the

reservation made by the State of Punjab satisfies the twin test of reasonable classification and rational nexus with the object sought to be achieved and such a reasonable classification is provided both under Articles 14 and 16 of the Constitution of India. The ratio of the aforementioned Supreme Court judgment squarely cover the present case as well as the reservation for the sportsmen is only to the extent of 3 per cent which is quite reasonable having intelligible differential with rational nexus to it. So, I do not find any infirmity in the action of the State Government including the definition of Sportsmen as given in Rule 2(d) (b) (ii) of Punjab Recruitment of Sportsmen Rules, 1988 and accordingly I uphold the validity of the said rules.

(Paras 15 & 16)

G. S. Bal, Advocate, for the petitioner.

M. L. Sarin, Advocate General Punjab with Randhir Singh,
D.A.G. Punjab, for the respondent.

JUDGMENT

Amarjeet Chaudhary, J.

(1) This judgment will dispose of Civil Writ Petitions No. 13271 of 1993, 12150 of 1994 and 17515 of 1994 as common questions of facts and law are involved.

(2) The petitioners in C.W.P. No. 13271/93 and 17515/94 have challenged the action of the respondents whereby they have not been selected and appointed as Assistant Sub-Inspectors Punjab Police against Sportsmen quota. They have also challenged the vires of Rule 2(d) (b) (ii) of the Punjab Recruitment of Sportsmen Rules, 1988 as *ultra vires* of the provisions of Article 16 of the Constitution of India as far as it restricts the benefit of Sportsmen to the persons who represented the State of Punjab in the State Level Championship.

(3) The petitioner in C.W.P. No. 12150/94 has not challenged the validity of the Punjab Recruitment of Sportsmen Rules, 1988 but has simply prayed for issuance of writ in the nature of mandamus directing the respondents to consider his claim of recruitment as Assistant Sub-Inspector Punjab Police against the Sportsmen quota under the statutory rules with a further prayer to appoint him as such. The petitioner in the said writ petition has not challenged the statutory rules presumably for the reason that he belongs to the State of Punjab and represented the State.

(4) The Police Department, State of Punjab issued advertisement dated 28th May, 1993 for direct recruitment to the post of Inspectors of Police and Assistant Sub-Inspectors of Police. In the advertisement besides reservation for other categories, 3 per cent reservation was provided for sportsmen of National/International level. It is the common case of all the petitioners that they applied for the posts of Assistant Sub-Inspectors of Police, who were put to physical test, written test and were also interviewed. However, they have not been selected. Rather no candidate against sports category has been selected. Petitioners in Civil Writ Petition No. 13271 of 1993 and 12150 of 1994 undisputedly did not represent the State of Punjab and petitioner in petition No. 17515 of 1994 though represented State of Punjab but did not secure either 1st or 2nd or 3rd position either at State level or at National level in any event, though all the three petitioners possess good sports record as per testimonials placed by them on record.

(5) The State of Punjab contested the claim of the petitioners by filing the written statement *inter alia* on the ground that no fundamental right of the petitioners had been violated and they had only a right of consideration which was granted to them. However, they did not fall under the definition of 'Sportsman' as given in Rule 2(d) (b) (ii) of the Punjab Recruitment of Sportsmen Rules, 1983. It has also been pleaded that the State of Punjab was competent to make reservation in Government services to the extent of 50 per cent and no illegality has been committed by reserving 3 per cent posts for the Sportsmen belonging to the State of Punjab which has been done only to encourage the sportsmen of the State and that the action of the State Government stands the test of reasonable classification with rational nexus to be achieved and that none of the petitioners or any other candidates belonging to Sports Category was found suitable and 5 posts falling to Sports category are still vacant. It has been pleaded that since the petitioners were duly considered and not found suitable so they were rightly denied appointment.

(6) The respondents have also relied upon a Division Bench judgment rendered in CWP No. 13469 of 1993 titled as *Balraj Singh and others v. State of Punjab and others* in which the same selection *qua* the category of Sportsmen was challenged and the said writ petition was dismissed by the Division Bench on the ground that a candidate has got only right of consideration for selection against

the post reserved for Sportsman/Sports Category and no right of selection. Since the petitioner was considered but not ground fit and suitable for selection so he was rightly rejected. Consequently the writ petition was dismissed.

(7) I have heard the learned counsel for the parties and perused the material on record.

(8) The controversy in all the three cases falls in narrow compass i.e. whether the provisions of Rule 2(d) (b) (ii) of the Punjab Recruitment of Sportsmen Rules, 1988 restricting the benefit of reservation of sports category only to a person belonging to the State of Punjab with the condition that he/she must have won first, second or third position in team or individual events while representing the State of Punjab in State level Championship or in any of the disciplines affiliated to Punjab Olympic Association organised by the State level Federation etc., is *ultra vires* of the provisions of Article 16 of the Constitution of India or not. Before answering this question, it is necessary to peruse the relevant provisions of Rule 2(d) (b) (ii), of the rules supra, which reads as under :—

“(2) They shall apply to all the services and posts connected with the affairs of the State of Punjab except the Punjab Vidhan Sabha Secretariat, Punjab Public Service Commission and Punjab and Haryana High Court.

2. Definitions :—In these rules, unless the content otherwise requires :—

(a) to (c) xxxxxxxx

(d) “Sportsman” means a person of either sex who fulfils the following conditions, namely :—

(a) In the case of recruitment to Reserved vacancy in Class-I or Class-II posts—

x x x x x x x x x x

(b) In the case of recruitment to a reserved vacancy in Class-II posts :—

(i) that he belongs to the State of Punjab ; and

(ii) that he has won first, second or third position in team or individual events while representing the State of Punjab in a State Level Championship in any of the discipline affiliated to the Punjab Olympic Association organised by the State Level Federation. In case of non-Olympic disciplines such as Cricket and Tennis, a winner should have attained any of the first three positions in a State Level Championship organised by the concerned State level Association affiliated to the concerned National Federation.

x x x x x x x x"

(9) Articles 14 and 16 of the Constitution which are relevant to the controversy involved are also reproduced as under :—

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 16

- (i) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (ii) No citizen shall, on ground 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 of them, be ineligible for, or discriminated against in respect of any employment or office under State.
- (iii) 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 authority within, a State or Union Territory any requirement as to residence within that State or Union Territory, prior to such employment or appointment.

- (iv) 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 or citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- (v) Nothing in this article shall affect the 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.

(10) Article 16 is only an incident of general concept of equality enshrined in Article 14, in the matter of appointment and promotion. It follows therefore, that a reasonable classification of employees or candidates for employment is permissible under Article 16 and that equality granted by Article 16(1) is only an equality between members of the same class of employees or the candidates. In nutshell, Article 14 deal with the general equality whereas Article 16 deals with the equality in the matter of employment. The provisions of Articles 14 and 16 are supplementary to each other and have therefore, to be read together. So the basis of principle of equality as enshrined under Article 14 will be the same in the matter of employment under Article 16.

(11) There is a catena of judgments that Article 14 prohibits a class legislation and not reasonable classification for the purpose of legislation. However, in order to pass the test of permissible classification two conditions must be fulfilled namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, differential must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis such as geographical or according to object or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

(12) The perusal of the written statement shows that State Government is competent to make reservation up to 50 per cent and that reservation for Sportsman in class III services to the extent of 3 per cent was made to encourage the sportsmen belonging to the

State of Punjab who have represented the State of Punjab and that the Sportsmen of other States cannot claim this reservation who can claim reservation either in their own States or at all India level and not specifically in a particular State. It has been further pleaded that if this reservation of 3 per cent is thrown open to the Sportsmen of whole country, then the interest of the player of the State of Punjab will be infringed and very purpose of reservation will be forfeited. Further, no candidate against Sports quota has been found to be suitable. Therefore claim of even the petitioners was duly considered, through written and physical tests and viva-voce but they were not found eligible and suitable by the Selection Committee.

(13) The matter with regard to reservation of seats for admission to Medical Colleges in favour of the persons who had studied for a particular period in the State came up for consideration in *Anant Madan v. State of Haryana* (1). The Hon'ble Apex Court after noticing a number of judgments rendered in the past came to the conclusion that giving preference in admissions on the basis of residence as well as institutional preference is permissible so long as there is no total reservation and in case of *Dr. Pradeep Jain etc. v. Union of India* (2), the Hon'ble Apex Court held that the reservation to the extent of 70 per cent on the basis of residence or institutional preference was permissible which percentage was subsequently increased to 85 per cent by the Hon'ble Apex Court in *Dinesh Kumar v. Moti Lal Nehru Medical College Allahabad and others* (3). This eligibility criteria was held to be in conformity with the provisions of Article 14 of the Constitution which was neither arbitrary nor unreasonable.

(14) Similar matter came up for consideration in a latest case before the Hon'ble Apex Court in *Gujrat University v. Rajiv Gopi Nath Bhatt and others* (4), and the Hon'ble Apex Court while relying upon the judgment in *Dinesh Kumar and Anant Madaan's cases supra* held that such a reservation on the basis of residence and institution is neither arbitrary nor unreasonable.

(1) J.T. 1995 (1) S.C. 612.

(2) 1984 (3) S.C.R. 942.

(3) J.T. 1986 S.C. 97.

(4) 1996 (2) Supreme Court Services Law Judgment 187.

(15) After considering and perusing the objects sought to be achieved by restricting the reservation to the sportsmen belonging to the State of Punjab who represented the State of Punjab and obtained 1st, 2nd or 3rd position either in a team or individual events and the Constitutional provisions, I have no doubt that the reservation made by the State of Punjab satisfies the twin test of reasonable classification and rational nexus with the object sought to be achieved and such a reasonable classification is provided both under Articles 14 and 16 of the Constitution of India.

(16) The ratio of the aforementioned Supreme Court Judgments squarely cover the present case as well as the reservation for the Sportsmen is only to the extent of 3 per cent which is quite reasonable having intelligible differential with rational nexus to it. So I do not find any infirmity in the action of the State Government including the definition of Sportsmen as given in Rule 2(d) (b) (ii) of Punjab recruitment of Sportsmen Rules, 1988 and accordingly I uphold the validity of the said Rules.

(17) Now coming to the individual cases, Since the petitioner in C.W.P. No. 13271/93, *Jaspal Singh v. State of Punjab and others* and C.W.P. No. 17515/94, *Ravi Katoch v. State of Punjab and others* do not fall in the definition of Sportsmen as per rule 2(d) (b) (ii) of the Rules (supra) so they were ineligible to be considered for the posts of Assistant Sub-Inspectors of Police against the posts reserved for Sportsmen category. In view of my finding on the validity of the said Rules, their claim has to be rejected and is accordingly rejected.

(18) So far as the case of the petitioner, Sudhir Bhanot in C.W.P. No. 12150/94 is concerned, it has been specifically averred by the respondents that his case was duly considered by the departmental selection committee but he was not found fit for selection. The respondents have also relied upon a judgment rendered by a Division Bench of this Court *qua* the challenge to the same selection by one Balraj Singh in C.W.P. No. 13469 of 1993, annexure R.1 with the written statement of C.W.P. No. 17515/94 in which it was held that the candidates have got a right to be considered but they have no right to be selected. I have perused the relevant record. Furthermore, the specific stand of the respondents is that the petitioner has not obtained first, second or third position in the State or National level Championship and mere participation in the event will not bring the petitioner within the four corners of the definition of

Sportsmen. Hence, he also cannot have any grievance in the matter, being ineligible.

(19) Before parting with the judgment, I would observe that though all the three petitioners may be good sportsmen, they have not fulfilled the criteria laid down under the rules inasmuch as the first two did not represent the State of Punjab either in the State or National level championship nor obtained first, second or third position. Similarly the petitioner No. 3 did not obtain any position either at the State level or in the National level championship in terms of Sportsmen Rules (supra). A peculiar situation has arisen in these cases that on one hand the petitioners are claiming the benefit of reservation against sportsmen category which is provided as a result of 1988 Rules (supra). On the other hand they are challenging provisions thereof so far as definition of Sportsmen is concerned. The petitioners can not be allowed to take this contradictory stand. Since reservation is a concession in accordance with the provisions of Articles 14 and 16 of the Constitution of India and for claiming that concession the necessary eligibility as provided in the Scheme/Rules for concession has to be adhered to.

(20) For the aforementioned reasons, I do not find any merit in the aforementioned writ petitions which are accordingly dismissed leaving the parties to bear their own cost.

R.N.R.

Before Hon'ble S. S. Sudhalkar, J.

BHAG SINGH AND ANOTHER—*Petitioners.*

versus

STATE OF PUNJAB.—*Respondent.*

Crl. M. No. 17622-M/95

8th August 1996

Constitution of India, 1950—Arts. 309 & 310—Code of Criminal Procedure, 1973—Ss. 468 & 482—Punjab Civil Services Rules, Vol. II—RI. 2.2(b) proviso 3—Providing of limitation of 4 years from date of