29. On the other hand, the learned Additional Advocate-General had rightly pointed out that the medium of Medical education is generally English whereas in the common rural schools, the English language is sometimes not taught at all. If so, its teaching begins at a later stage and it is taught by teachers so ill-qualified to teach this language that the very medium through which the medical education is to be imparted is rendered weak in the students. This condition also solidifies by the time the student has completed his education upto the Middle Standard and in many cases students upto this standard in common rural schools would have little or no knowledge of English language or if any, it would be so rudimentary as to present a basic handicap thereafter.

30. Mr. Bhandari had repeatedly attempted to contend that the reservation herein was in favour of a class which could not be mathematically labelled as both socially and educationally backward. His argument has relevance only in the context of Article 15 of the Constitution of India and the importation of clause (4) thereof. I have already, unequivocally opined that the present case does not attract Article 15 and hence the contention raised has now little relevance.

31. In the light of the aforesaid exhaustive discussion, I am of the considered view that the impugned reservation does not at all suffer from any vice of unconstitutionality and has, therefore, to be upheld. The writ petition is without merit and is hereby dismissed. In view of the difficult questions raised, I would decline to burden the petitioners with costs.

Prem Chand Jain, J.—I agree.

D. S. Tewatia, J.—I agree.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia C.J., D. S. Tewatia and S. S. Kang, JJ.

KANWALJIT SINGH SIDHU and others,—*Petitioners*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 3723 *of* 1979

May 17, 1980.

Constitution of India 1950—*Articles* 14, 15, 16 *and* 341—*Quota of appointments and posts reserved, for scheduled castes*—50 *per cent of* *this quota reserved for Balmikis and Mazbi Sikhs—Such reservation—Whether discriminates between one scheduled caste against another—Articles* 14 *and* 16*—Whether violated.*

Held, that the scheme of reservation in order to fall within the requirement of Article 16(4) of the Constitution of India, has merely to satisfy two criteria; (i) that the given backward class is so, because of social and educational backwardness and (2) that the share of this particular class in the Services is so meagre that it required weightage. For the purposes of Article 16(4) of the Constitution, no distinction was sought to be made between a socially and educationally 'backward class' and a 'scheduled caste'. Since all sections of scheduled castes, in the nature of things, are socially and educationally backward classes, so they stood included in the expression 'backward class' as used in Article 16(4) of the Constitution of India. A particular class of citizens may be socially and educationally backward yet it may not be entitled to preferential treatment if its representation in the Services is considered adequate, i.e., all socially and educationally backward classes by virtue of that fact are not entitled to preferential treatment in the matter of reservation in appointments or posts, only such of them whose representation in the Service, is so inadequate that it requires weightage. Various castes which fall within the umbrella of 'scheduled castes' are backward classes, but on that criteria all of them would not qualify for preferential treatment under Article 16(4) of the Constitution of India either *qua* non-backward classes or *inter se*. Once it is accepted that every caste which is mentioned in the Presidential notification which becomes part of scheduled castes, by virtue of Article 341 of the Constitution is *ipso facto* treated as socially and educationally backward class, by virtue of that label and in the Presidential notification this particular class of citizens is mentioned by the caste name, then all the persons, belonging to that particular caste have to be treated as belonging to a class which is socially and educationally backward. This group of socially and educationally backward persons either has to be mentioned by individual names, which would be difficult or by caste label. In the circumstances, the only compendium way of describing them is to describe the entire caste to which they belong to be an educationally and socially backward class. It cannot, therefore, be said that the reservation effected for Balmikis or Mazbi Sikhs (both classes in English language are known as sweepers or scavengers) is solely on the basis of caste. The dominant criteria that has gone into consideration is the social and educational backwardness of all persons belonging to Balmikis or Mazbi Sikhs caste. What is more besides this caste or class label, they have additionally to satisfy an objective and secular requirement of inadequacy of their representation in the Government services. Thus, the Government instructions prescribing 50 per cent reservation for Balmikis and Mazbi Sikhs out of the quota reserved for the scheduled castes are constitutionally valid. (Paras 17 and 18).

Sadhu Singh vs. *State of Punjab and others*,
Civil Writ 2475 of 1976 decided on 6th July, 1976.

OVERRULED.

Case referred by a Division Bench in C.W.P. No. 4137 of 1979 consisting of Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice I. S. Tiwana on 7th February, 1980 to a full Bench for decision of an important question of law involved in the case. The Full Bench consisting the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice S. S. Kang finally decided the case on 17th May, 1980.

Petition under Articles 226/227 of the Constitution of India praying that :—

(a) *a writ in the nature of* certiorari *quashing the instructions issued by the Punjab Government dated 5th May, 1975 and dated 19th September, 1975, Annexures P-1 and P-2 respectively be issued;*

(b) *A writ in the nature of* mandamus *directing the respondents Nos. 1 and 2 not to disturb the merit of the petitioners in the P.C.S. (Executive) be issued.*

(c) *The petitioners be declared senior to respondents No. 3 to 5, for all purposes ;*

(d) *Any other writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case be issued;*

(e) *The costs of the petition be awarded to the petitioners.*

Kuldip Singh, Advocate, *for the Petitioner.*

S. K. Sayal, A.A.G., for the State, *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) Whether the Government instructions dated May 5, 1979 and September 19, 1975, reserving for Balmikis and Mazbi Sikhs, 50

per cent out of the quota of the appointments and posts, reserved for scheduled castes and giving first preference in regard thereto, are violative of Articles 14 and 16 of the Constitution of India, in that the same permit discrimination between one scheduled caste as against another scheduled caste, on the basis of caste only, is the significant question common to both the writ petition Nos. 3723 of 1979 and 4137 of 1979, that falls for determination.

(2) It is to be highlighted that in C.W. No. 4132 of 1979, the petitioner claiming to be a Mazbi Sikh, has sought a mandamus against the State and the Punjab Public Service Commission to give effect to the said Government instructions which are appended to the petition as Annexure P-3. In this case he was the only qualified Mazbi Sikh, entitled to be selected against one post of Lecturer reserved for the scheduled caste, yet he was not selected for the same by the Punjab Public Service Commission, respondent No. 2.

(3) In the other case, the boot appears to be on the other foot i.e. the petitioners are not either Balmikis or Mazbi Sikhs i.e. they belong to other sections of the scheduled castes. They in the merit list prepared by respondent No. 2, Punjab Public Service Commission, for the given post, were higher up than respondent Nos. 3, 4 and 5, yet relying on the Government instructions in question the Government proceeded to give preference to respondent Nos. 3, 4 and 5 over the petitioners, on the ground that respondent Nos. 3 and 4 being Balmikis and respondent No. 5 being Mazbi, were entitled, in view of the Government instructions, to be preferred over the petitioners, although the petitioners in the scheduled castes categories including the Balmikis and Mazbi, were higher in merit.

(4) The stand taken by the Government in the affidavit filed by way of return to C.W.P. No. 4132 of 1979, is somewhat equivocal and ambiguous. What one can make of it is only this that they say that it was wrong on the part of the petitioner to assert that two posts of lecturers in Physical Education, were reserved for scheduled castes and that since the petitioner was not selected by the Punjab Public Service Commission, there was no question of his being appointed to the post of lecturer in Physical Education.

(5) On the other hand the stand taken by the Punjab Public Service Commission, in the affidavit filed on its behalf, is that it interpreted the Government Instructions, in question, to mean that

wherever the merit of a Mazbi Sikh or Balmiki and a candidate belonging to other scheduled caste categories, was equal then first preference had to be given to a Balmiki or a Mazbi Sikh, that since in the present case merit of respondent No. 3 was higher than that of the petitioner, so the Commission recommended respondent No. 3 for appointment to the given post.

(6) In the other petition i.e. C.W. No. 3723 of 1979 the State Government while refuting the petitioners' allegations that respondent Nos. 4 and 5 were not among the first 75 persons or that respondent No. 4 was selected for the allied services, took the stand on the primary point pertaining to the Government Instructions that this was the exclusive jurisdiction of the Government to determine the manner in which the reservations in the services were to be made, within the ambit of article 16, clause (4) of the Constitution of India to ensure adequate representation of backward class of citizens, that in the instructions it was nowhere provided that only if the merit of two scheduled caste candidates of two categories in question was equal, then only first preference had to be given to a Balmiki/Mazbi Sikh and not otherwise. In its affidavit the State Government has taken the categoric stand that these are legally valid and had rightly been acted upon.

The validity of these very Government instructions had earlier faced challenge in two writ petitions, that is, (*Sadhu Singh* v. *State of Punjab and others*) decided on 6th July, 1976; and Civil Writ Petition No. 3480 of 1976 (*Ram Rattan and others* v. *The State of Punjab and others*) decided on 16th November, 1977.

(7) *In Sadhu Singh's case,* there was only one post and the petitioner in that case claiming to be a Mazbi Sikh, staked his claim to that post on the strength of the instructions in question. In a rather short judgment, which appears to have been rendered *in limine,* the Bench observed that what the petitioner wanted to do was to convert the rule of preference contained in the executive instructions into a rule of reservation within the reservation. It was held that in their view the instructions contained a mere rule of preference which could operate only when merit was equal. It could not have been intended to create a reservation within a reservation.

(8) Goyal, J., who delivered the opinion for the Bench in *Ram Rattan and others' case,* distinguished the decision in *Sadhu*

Singh's case by observing that the said order was passed by the Bench *in limine* and that the validity of the said instructions was neither challenged nor adjudicated upon by the Bench. Goyal J., while unholding the validity of the instructions in question, evidently rested heavily on the Supreme Court decision reported in *Miss Rita Kumar* v. *Union of India and others* (1), wherein their Lordships upheld the vires of the administrative classification of the repatriates between more re-settled and less re-settled on the basis of length of stay in this country and selecting less re-settled for the limited seats reserved for them in the educational institutions.

(9) Since Goyal, J. had merely sought to distinguish the decision in *Sadhu Singh's case* on facts and the clear and categoric observation of the Bench in that case to the effect that the said instructions merely contained a rule of preference and a rule of reservation within reservation could not be read into them, stood intact, the conflict between the ratio of the two decisions regarding what the instructions provided for was there for all to see. This apparent conflict led to the reference of this matter to the Full Bench and that is how the matter is before us.

(10) Mr. J. L. Gupta, learned counsel for the petitioner in Civil Writ No. 4132 of 1979 and Mr. Kuldip Singh, learned counsel for the petitioners in C.W.P. 3723 of 1979, have addressed us. The former has canvassed for upholding the validity of the instructions, while the latter for the contrary proposition of declaring the Government instructions as unconstitutional and null and void.

(11) The point that has been primarily canvassed before us by Mr. Kuldip Singh is that for the purposes of article 16, clause (4) of the Constitution of India, the scheduled caste as a class is entitled to preferential treatment in the matter of reservation for appointments and posts as against the rest and not its constituents *inter se;* that is that the quota reserved for scheduled castes has to be shared by all the scheduled castes on the basis of their *inter se* merit and no chunk out of the said quota can be earmarked for any one given constituent of the scheduled caste class. Mr. Kuldip Singh appears to rest his aforesaid submission on the following observations of Krishna Iyer, J. in *State of Kerala and*

(1) AIR 1973 S.C. 1050.

another vs. *N. M. Thomas* and others (2): —

> "The word 'caste' in Art. 16(2) does not include 'Scheduled caste'. The definition of 'scheduled castes' in Article 366(24) means: "such castes, races or tribes or parts of or groups within such castes, races, or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution." This shows that it is by virtue of the notification of the President that the Scheduled Castes come into being. Though the members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of the Presidential notification. Moreover, though the members of tribe might be included in Scheduled Castes, tribe as such is not mentioned in Art. 16(2)."

In regard to the other limb of his submission that one scheduled caste cannot be given preference over another scheduled caste, he heavily draws upon the following observations of Gajendragadkar, J. (as he then was) in *M. R. Balaji and others* vs. *The State of Mysore and others,* (3): —

> "In this connection, it is necessary to add that the sub-classification made by the order between Backward Classes and More Backward Classes does not appear to be justified under Article 14(4). Article 15(4) authorises special provision being made for the really backward classes. In introducing two categories of Backward Classes what the impugned order, in substance purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced compared to the most advanced classes in the State, and that, in our opinion, is not the scope of Art. 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and more Backward. The classification of the two categories, therefore, is not warranted by Art. 15(4)."

(2) AIR 1976 S.C. 490.
(3) AIR 1963 S.C. 649.

He also placed reliance on the following observations of Palekar, J. in *Shri Janki Prasad Parimoo and others* vs. *State of Jammu & Kashmir and others* (4):—

> "If all the brothers are socially and educationally backward, you will be differentiating between them by calling some more backward and others less backward, a thing not permitted by Balaji's case (supra). There is, therefore, substance in the contention of Mr. Sen that the Committee has created these two artificial groups of "cultivators" and "pensioners" for the purpose of affording certain benefits under the Constitution instead of identifying socially and educationally backward classes."

(12) Before analysing the point canvassed by Mr. Kuldip Singh, it would be desirable to notice the relevant provisions of Articles 15 and 16 of the Constitution of India as he has made some effort to read provisions of Article 15(4) into the provisions of clause (4) of Article 16 of the Constitution of India to see as to whether his effort in this direction, can pass muster :—

> "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.
>
> * * * *
>
> 15(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."
>
> "16. (1) to 16. (3) * * *
>
> 16 (4) Nothing in this article shall prevent the State from making any provisions 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.
>
> 16. (5) * * * "

(13) In *Thomas's case* (supra), Krishna Iyer, J. made the observations, on which reliance has been placed by Mr. Kuldip

(4) (1973) S. Court Cases 930.

Singh, in the context of the question posed in that case, which was whether the preferential treatment given to the scheduled caste candidates, was based on caste criterian, which was not permissible by virtue of Article 15, clause (1) of the Constitution of India. It was the view of their Lordships that merely from the fact that the expression 'caste' appears after the word schedule, the schedule caste does not become a caste. It is an amalgam or as Krishna Iyer, J. characteristically put it as the 'mixed bag' of various castes. Sex, creeds and races and it is thus a class and not a caste. The observations aforesaid not even remotely lend support to a proposition which Mr. Kuldip Singh appears to have in mind that scheduled castes by virtue of the Presidential notification, envisaged in Article 341 of the Constitution of India, would become an individual class, in that the constituent groups have to sink and swim together with other groups in the matter of appointments and posts and that any particular group, caste, community of race which together with other such groups, caste, community and race constitutes scheduled caste, cannot be separated from the other for preferential treatment. Krishna Iyer, J. on the other hand appears to suggest a proposition contrary to the one that Mr. Kuldip Singh is projecting and in this regard, his following observations come to mind:—

> "In the light of the experience here and elsewhere, the danger of 'reservation', it seems to me, is threefold. Its benefits, by and large are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake.
>
> "In fact, research conducted by the A. N. Sinha Institute of Social Studies, Patna, has revealed a dual society among Harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Arts. 46 and 355 remain a 'noble romance', the bonanza going to the 'higher' Harijans."

(14) As regards the observations relied upon from *Balaji's case* (supra) which were reiterated in *Janki Prasad's case* (supra), it may be observed that that case has a chequered history. In that case, it was the fourth attempt on the part of the Mysore State to make reservations for backward classes, which could be accommodated within the ambit of Article 15(4) of the Constitution of Inda. Three

earlier attempts having been adjudged on examination by the Courts, to be suffering from the vice of unconstitutionality. By way of illustrations; In the first attempt, except Brahmins rest of the population of the State was categorised or labelled as backward and almost 75 per cent of the seats were reserved for them. The subsequent attempts were more or less to implement the earlier decision, but under the garb of deceptive appearances trying only in form to conform to the constitutional requirement. Their Lordships in para 21 of the judgment clearly observed that the criteria to judge backward classes has to be on the touch-stone of social and educational backwardness, emulatively and not on the basis of a particular caste or class being backward, in relation to another caste or class. According to their Lordships the reservations ordered by the Mysore Government for admission to the professional Colleges, suffer from the same vice of judging backwardness of a caste or class in relation to another caste or class. When their Lordships observed that there cannot be any such thing as more backward or less backward, they mean to emphasize the fact that Article 15(4) of the Constitution of India, permits exception to the requirement of Article 15(1) of the Constitution only in cases of scheduled castes and those backward classes, which in the matter of social and educational backwardness were almost akin to them and when so judged truly it was that class which was stated to be more backward that perhaps deserved differential treatment and not the one which was labelled as less backward. Otherwise, their Lordships feared that if the scheme of reservation had been allowed to stand that would have virtually covered 90 per cent of the population of the State. In the case there was no *inter se* dispute between the less backward and the more backward class candidates which required to be settled. The dispute firstly was that the criteria for judging the backwardness did not conform to the one indicated by the Supreme Court in its earlier decisions and secondly that the reservation that came to be effected came to about 68 per cent which could not be considered to be reasonable.

(15) *Janki Prasad Primoo and others* vs. *State of Jammu and Kashmir and others* (5), also has a chequered history. There the Kashmir Government, in the first instance, had almost reserved 90 per cent of the seats for Muslims of the valley as their representation in the Services was considered to be that inadequate. There had been serious litigation between the State on the one hand and the

(5) AIR 1973 S.C. 1.

parties affected on the other, after 1954 when Part III of the Constitution was made applicable to the State of Jammu and Kashmir. The problem of backwardness was got investigated by Gajendragadkar Commission and thereafter by a Committee headed by a retired Chief Justice of the Jammu and Kashmir High Court. Substantially, acting on the recommendation of the said Committee, the State Government framed Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation) Rules, 1970, which came up for consideration before their Lordships. It was while examining those rules, their Lordships posed a question for answer whether the rules by which backward classes were determined for the purposes of Articles 15(4) and 16(4) of the Constitution of India, were violative of those Articles. The said rules comprised of five parts. Their Lordships examined each part thereof along with the report of the Sub-Committee which were sub-divided into chapters. By one chapter cultivators of land with small holdings, were identified as backward classes. In another chapter, the dependents of 'pensioners' were declared to belong to backward class. If such pensioners had retired from certain Government post, mentioned in Appendix I and if the maximum of the scale of pay of these posts did not exceed Rs. 100 per month. The Committee had felt that these pensioners deserved to be considered as backward classes because most of them held class IV or similar posts. Their Lordships felt that ex-servicemen who fell in that class, were numbering about 90,000 and Civil post pensioners of that class were 15,000, it was difficult to say that all these pensioners formed a class in the sense that they were homogeneous group. They were an amorphous section of Government servants who by the accident of receiving Rs. 100 or less as pay at the time of retirement or being ex-servicemen of certain grades were pushed into an artifically created body. It may be that they belonged to Class IV or similar grade service of the State, but that was not the true test of their social and educational backwardness. In days when sources of employment were few, many people, though socially advanced, might have accepted low paid jobs. Some of them might have failed to make educational grade and were hence forced by necessity to accept such less paid jobs. Some others might have prematurely retired from posts carrying the scale referred to above. Then this accidental belonging to a section of Government servants of certain category was no test of their social backwardness. The test broke down if the position of a brother of such a pensioner was considered. If the brother also a Government servant, and the misfortune of retiring when holding a post, the maximum of which was Rs. 105, he was liable to be regarded as not socially and educationally backward. In our conscience, so far as the two brothers were concerned, they remained on the same social level. Another brother who was privately employed and retired from service, without any pensionary benefits, would not be entitled to be classed as backward under the test. The anomalies arose because of the artificial nature of the group created by the Committee.

(16) It was in this background that their Lordships made the observation that "if all the brothers are socially and educationally backward, you will be differentiating between them by calling some more backward and others less backward."

(17) It is too late in the day to say that the caste, community or religion or race, would be sole or even a dominant criteria to judge the social or educational backwardness of a backward class. However, persons comprising in a caste, who are socially and educationally backward, can be labelled as belonging to a backward class. The two groups i.e., socially and educationally backward class and scheduled castes were differentiated for the purposes of clause (4) of Article 15 of the Constitution of India. For the reservation in that case was meant for social, educational and economic advancement and it was recognised that scheduled castes, in the nature of things, were backward, but besides them, there were other groups of persons who were backward and deserved preferential treatment. Thus the need arose to class them separately from scheduled castes for the reason that such groups were not considered as backward as scheduled castes and therefore, they could not be grouped with the scheduled castes and if they had been grouped with them, they might have cornered a larger portion of the reserved cake, with the result that the benefits intended for such persons who are now termed as scheduled castes, might have eluded them. If that class of citizens had failed to take benefit in the matter of educational facilities, then there was no question of their being able to secure adequate representation in Government Services. The Constitution makers having secured wherewithal for future advancement of the scheduled castes, thereafter, in the matter of reservation of services, the continuation of dichotomy that was observed in Article 15, clause (4) of the Constitution of India, perhaps became unnecessary and redundant and it was for that reason that every 'backward class' was made entitled to preferential treatment if its representation in the services was considered inadequate. The scheme of

reservation in order to fall within the requirement of Article 16(4) of the Constitution of India, had merely to satisfy two criteria; (i) that the given backward class is so, because of social and educational backwardness; and (2) that the share of this particular class in the Services is so meagre that it required weightage. For the purposes of Article 16(4) of the Constitution, no distinction was sought to be made between a socially and educationally 'backward class' and a 'scheduled caste'. Since all sections of scheduled castes, in the nature of things, are socially and educationally backward classes, so they stood included in the expression 'backward class' as used in Article 16(4) of the Constitution of India. A particular class of citizens may be socially and educationally backward, yet it may not be entitled to preferential treatment if its representation in the Services is considered adequate i.e. all socially and educationally backward classes by virtue of that fact are not entitled to preferential treatment in the matter of reservation in appoinments or posts, only such of them whose representation in the Services, is so inadequate that it requires weightage. Various castes which fall within the umbrella of 'scheduled castes' are backward classes. but on that criteria all of them would not qualify for preferential treatment under Article 16(4) of the Constitution of India either *qua* non-backward classes or *inter se*. By way of illustration; if in a given state, the 'scheduled caste' is comprised of five groups or constituents, three of them having three times as much representation individually as the remaining two groups or constituents, in our opinion, in a situation like this, it would be open to the State Government to give preferential treatment to the candidates of those two sections of the scheduled castes, whose representation in comparison to the other three constituent sections of the scheduled castes, is so grossly inadequate.

(18) Once it is accepted that every caste which is mentioned in the Presidential notification which becomes part of scheduled castes, by virtue of Article 341 of the Constitution is *ipso facto* treated as socially and educationally backward class, by virtue of that label and in the Presidential notification this particular class of citizens, is mentioned by the caste name, then all the persons, belonging to that particular caste, have to be treated as belonging to a class which is socially and educationally backward. This group of socially and educationally backward persons either has to be mentioned by individual names, which would be difficult, or by caste label. In the circumstances, the only compendium way of

describing them is to describe the entire caste to which they belong to be an educationally and socially backward class. In the circumstances, therefore, it cannot be said that the reservation effected for Balmikis or Mazbi Sikhs (both classes in English language are known as sweepers or scavengers) is solely on the basis of caste. The dominant criteria that has gone into consideration is the social and educational backwardness of all persons belonging to Balmikis or Mazbi Sikhs caste. What is more besides this caste or class label, they have additionally to satisfy an objective and secular requirement of inadequacy of their representation in the Government services.

(19) Mr. Kuldip Singh then urged that where was the material on the record to come to the conclusion that in fact in Services the representation of Balmikis and Mazbi Sikhs, in comparison to other groups of the scheduled castes, was so inadequate as to justify preferential treatment for them within the group of scheduled castes. The learned counsel further urged that the *ipse dixit* of the Government in this regard is not to be accepted. There can be no doubt about the fact that it is always open to the Court to be satisfied in this regard, but in the present case, there is not even a word in the entire petition saying that the representation in the Services of Balmikis and Mazbi Sikhs, is, in fact, inadequate. When such is the position, it would be improper not to accept the assertion of the State that, in fact, the State Government was satisfied that the representation of Balmikis and Mazbi Sikhs, as compared to other groups of scheduled castes was, in fact, inadequate and it was that fact that led to the promulgation of the impugned instructions.

(20) For the reasons aforesaid, we hold that the impugned instructions prescribing 50 per cent reservation for Mazbi Sikhs out of the quota reserved for scheduled castes are constitutionally valid. In this view of the matter, we expressly over-rule the view taken in *Sadhu Singh's case* (supra) that the instructions contained a rule of preference and could not be held to be providing for reservation within reservation.

(21) For the reasons aforementioned, we allow Civil Writ No. 4132 of 1979 to the extent that the Punjab Public Service Commission shall reconsider the case of the petitioner and so would the State Government and if two scheduled castes candidate were sought to be appointed to the post of Lecturer in Physical

Education, then to give first preference to the petitioner in the matter of appointment. The other petition (Civil Writ No. 3723 of 1979) is, however, dismissed, but with no order as to costs in both the petitions.

S. S. Sandhawalia, C.J.—I agree.
S. S. Kang, J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and D. S. Tewatia, JJ.

WAHIDI BEGUM—*Petitioner.*

versus

UNION OF INDIA and others,—*Respondents.*

Civil Writ Petition No. 5639 *of* 1975.

May 29, 1980.

Constitution of India 1950 *(as amended by the Constitution) (Forty Second Amendment) Act,* 1976*—Article* 226*—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of* 1954*)—Section* 33*—Words 'any other remedy occurring in clause* (3) *of Article* 226*—Meaning of —Such remedy—Whether should be an effective remedy—Remedy under section* 33*—Whether an efficacious one so as to bar a petition under Article* 226.

Held, that the intention of Parliament that the remedy as envisaged in clause (3) of Article 226 of the Constitution of India 1950 has to be adequate, real and not illusory is deducible from sub-clauses (b) and (c) of clause (1) of Article 226 itself. Under sub-clauses (b) and (c), the writ jurisdiction can be exercised for the redress of the injury resulting from contravention of some constitutional or statutory provisions of law or illegality committed by authority in proceedings thereunder and where such injury is of substantial nature or results in substantial failure of justice. But in view of further embargo put on the exercise of the jurisdiction of the court as a result of the provisions of clause (3) of Article 226 the power is not exercisable, if for such an injury the redress can be had under the statute by resorting to the remedy provided therein. But where such remedy is incapable of providing redress as is envisaged under sub-clauses (b) and (c) then certainly it could never be the intention of the Parliament to take away the jurisdiction of the Court