

FULL BENCH

CIVIL MISCELLANEOUS

*Before Shri O. Chinnappa Reddy, Acting C.J., M. R. Sharma and
Surinder Singh, JJ.*

KANWAL PARKASH ETC.—Petitioners.

versus

THE STATE OF PUNJAB ETC.—Respondents.

Civil Writ Petition No. 6409 of 75

August 13, 1976.

*Constitution of India 1950—Articles 14, 16, 46, 309 and 335—
Punjab Civil Secretariat (State Service Class III) Rules 1952—
Rules 8(1) and 15—Punjab Re-organisation Act (31 of 1966)—Sec-
tion 82—Reservation of posts for Scheduled castes—Inadequate re-
presentation of such classes in public services—Whether to be pre-
sumed—Extent of such reservation—If and when can be challenged—
Reservation of such posts—Whether can be made by an executive
order—Persons working on probation—Whether can be promoted to
the higher rank—Increase in percentage of reservation—Whether
affects the conditions of service of others—Prior approval of the
Central Government under section 82 for such increase—Whether
necessary.*

Held, that so far as the members of the Scheduled Castes/Tribes are concerned, in view of the provisions of Article 335 of the Constitution of India 1950, this fact will have to be presumed that class for which reservation is made is not adequately represented in the services under the State. It is, therefore, not necessary for the State Government to hold any enquiry into the question of social backwardness of the backward classes before reserving seats for them. (Para 27)

Held, that the extent of reservation to be made is primarily a matter for the State to decide. But this does not mean that the decision of the State is not open to judicial review. The reservation must be only for the purpose of giving representation in the services to the scheduled castes, scheduled tribes and backward classes. The exception provided in Article 16(4) should not make the rule embodied in Article 16(1) meaningless. But the burden of establishing that a particular reservation made by the State is offensive to Article 16(1) is on the person who takes the plea. The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation does not by itself make the reservation bad. The length of the leap to be provided depends upon the gap to be covered. (Para 29)

Held, that the Punjab Civil Secretariat (State Service Class III) Rules 1952 have been promulgated by the Governor of Punjab in exercise of powers under Article 309 of the Constitution of India. There is no provision in these rules debarring the Government to

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make reservation of posts for the members of Scheduled Castes/Tribes. The opening words of Article 309 are "subject to the provisions of this Constitution". This implies that the rules framed under Article 309 of the Constitution would give way to other provisions of the Constitution if and when a question regarding their conflict *inter se* is raised. It is not necessary that for affording relief to the members of the backward classes, the State should introduce legislative measures. The executive instructions reserving posts for the Scheduled castes have been validly issued pursuant to a command of the highest order contained in the Constitution and their effect cannot be whittled down by the rules framed under Article 309 of the Constitution. This apart, rule 15 of the rules makes the Government the final authority to order that the provisions of the Rules should be relaxed with respect to any class or category of persons. Thus reservation of posts for scheduled castes can be made by an executive order and it is not necessary for the State to introduce legislative measures. (Paras 32, 33 and 35)

Held, that it has been specifically mentioned in rule 8(1) of the Rules that the period of duty spent on a higher post can be allowed to count towards the period of probation fixed under the rules. This shows that the persons working on probation can in fact be promoted to the higher ranks. (Para 36)

Held, that chances of promotion especially when their availability is remote and speculative in nature cannot be regarded as conditions of service. Therefore increase in the percentage of seats reserved for the scheduled castes cannot be said to affect the conditions of service of others and consequently the prior approval of Central Government under section 82 of the Punjab Reorganisation Act, 1966, is not necessary. (Para 38)

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

- (i) a writ in the nature of certiorari quashing the promotion and appointment of respondents 3 to 7 to the posts of Deputy Superintendents/Superintendents in supersession of the petitioners, be issued;
- (ii) that the instructions Annexure 'P-1' and any other instructions issued by the State Government, making provisions for accelerated promotions to the scheduled castes, be declared nullity and be set-aside;
- (iii) that a writ in the nature of mandamus directing the respondent No. 1 to consider and promote the petitioners to the posts of Deputy Superintendents/Superintendents with retrospective effect from the date when persons junior to them were considered;
- (iv) any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued;

- (v) the record of the case be ordered to be sent for;
 (vi) the cost of the petition be awarded to the petitioners;

and further praying that—

- (a) the condition of attaching original/certified copies of the annexures be ordered to be dispensed with;
 (b) during the pendency of the writ petition further promotions may kindly be stayed.

Kuldip Singh, Bar-at-law, with R. S. Mongia, Advocate, for the Petitioners.

H L. Sibal, Senior Advocate with G. S. Chawla and Mr. S. C. Sibal, Advocates, for the Respondents Nos. 1 and 2.

B. S. Khoji, Advocate, K. P. Bhandari, Advocate, in Civil Writ No. 998/76 for No. 5, with Mr. Gopi Chand, Advocate and S. P. Soni, Advocate, for respondent 3 to 7.

JUDGMENT

M. R. Sharma, J.—Common questions of law involving the interpretation and Constitutional validity of the instructions relating to the reservation of promotional posts for the members of the scheduled castes/tribes and backward classes are involved in Civil Writ Petitions Nos. 6409 of 1975, 976 of 1974 and 998 of 1976, which were admitted to hearing by a Full Bench. All of them are being disposed of by this judgment.

(2) Civil Writ Petition No. 6409 of 1975, has been filed by six employees of the State of Punjab. The petitioners Nos. 1 and 2 are serving in the Secretariat as Deputy Superintendents and petitioners Nos. 3 to 6 are serving as Assistants.

(3) The petitioner No. 1 entered service of the Patiala and East Punjab States Union as a Clerk on May 3, 1945. He was promoted to the post of an Assistant on December 14, 1957, and to the post of a Deputy Superintendent on January 10, 1975. He is 51 years old.

(4) The petitioner No. 2 joined the service of the erstwhile State of Punjab as a Clerk on October 30, 1948. He was promoted as an Assistant on January 11, 1958, and as Deputy Superintendent on September 25, 1975. He is 52 years old.

(5) The petitioner No. 3 joined service of the erstwhile State of Punjab as a Clerk on October 6, 1948, and was promoted to the post of an Assistant on May 16, 1958. He is 50 years old.

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(6) The petitioner No. 4 is 51 years old. He joined service of the erstwhile State of Punjab as a Clerk on November 29, 1948, and was promoted to the post of an Assistant on May 17, 1958.

(7) The petitioner No. 5 is 42 years old. He joined as a Clerk in the erstwhile State of Punjab on March 14, 1951, and was promoted to the post of an Assistant on September 29, 1969.

(8) The petitioner No. 6 is about 43 years old. He also joined service as a clerk in the erstwhile State of Punjab on July 21, 1955, and is at present holding the post of an Assistant in a substantive capacity.

(9) Respondents Nos. 3 to 7 are the members of scheduled castes and are serving as Deputy Superintendents in the Punjab Secretariat, Chandigarh. The following table shows their respective ages and the dates of their appointment to various posts :—

Name	Age	Date of appointment as Clerk	Date of promotion as Assistant	No. of steps gained as a result of reservation	Date of promotion as Deputy Superintendent	No. of steps again gained in seniority as a result of reservation	Date of promotion as Superintendent
1	2	3	4	5	6	7	8
Viru Mal	44	20-12-57	1964	78 Clerk	1972	223 Assistants	1974 Promoted as Assis- tants on officiating basis with effect from 3-11-1972
Baldev Singh Azad	37	19-12-57	27-4-68 <i>ad hoc</i> basis	45 Clerks	7-1-75	217 Assistants	
Tulsi Ram Dhanda	45	19-1-58	1-12-66 <i>ad hoc</i> basis	45 Clerks	7-1-75	217 Assistants	
Surinder Singh	39	12-9-57	12-12-66 <i>ad hoc</i>	50 Clerks	12-8-75	230 Assistants	
Des Raj Bangar	37	4-1-58	7-2-67 <i>ad hoc</i> basis	55 Clerks	27-8-75	238 Assistants	

(10) It has been averred in the petition that the State Government did not hold any enquiry into the question of social backwardness of the backward classes before reserving seats for them. Since the reservation of seats for backward classes is a part of the instructions which make reservations for the members of the scheduled castes/tribes, the instructions are bad as a whole. On the basis of the comparative study of the service career of the petitioners Nos. 3 to 7, it is submitted that these respondents have been able to secure promotions to the higher ranks of service during a much shorter period because of the instructions which have resulted in the denial of equality of opportunity in matters relating to service to the petitioners.

(11) The next ground raised is that the service is governed by the Punjab Civil Secretariat (State Service Class III) Rules, 1952 (hereinafter called the Rules), which govern the whole field and the instructions issued under an executive order cannot whittle down the effect of the Rules. Further, the promotions of the respondents is invalid because the *ad hoc* service put in by them as Assistants has been taken into consideration for promoting them. The jurisdiction of the Secretary to Government, Punjab, Scheduled Castes and Backward Classes Welfare Department, is also challenged because under the Rules Chief Secretary is the appointing authority of the members of the Service.

(12) Last of all, it was asserted that these instructions have changed the conditions of service of the petitioners and that the same could not have been promulgated without prior consultation with the Central Government under section 82 of the Punjab Reorganisation Act, 1966.

(13) On behalf of the State of Punjab, written statement in affidavit form has been filed by Shri Balbir Singh, Under Secretary to Government, Punjab, Secretariat Administration, Chandigarh. On behalf of respondent No. 2, written statement in affidavit form has been filed by Shri Onkar Singh Bains, Officer on Special Duty.

(14) On behalf of respondents Nos. 3 to 7 a joint written statement has been filed in affidavit form by Shri Viru Mal (respondent No. 3).

(15) The three written statements are almost identical. Two preliminary objections have been taken in these written statements

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Firstly, it is urged that no joint petition is competent because the alleged cause of action arose in favour of each petitioner on different date. Secondly, it was submitted that the petition was unduly belated. On merits, it was submitted that the reservation of seats for the backward classes has been properly made, the reservation of seats for the scheduled castes/tribes under the instructions does not contravene the Fundamental Rights of the petitioners, the instructions do not contravene the Rules; the respondents Nos. 3 to 7 have been validly appointed to promotional posts because there was no provision in the Rules which debarred the authorities to take into account the service put in by them on *ad hoc* basis, the Secretary to Government, Punjab, Scheduled Castes and Backward Classes Welfare Department, was competent to issue the impugned instructions and that it was not necessary to have prior consultation with the Central Government before issuing these instructions.

(16) At the very outset, it becomes necessary to consider some of the constitutional provisions and the relevant instructions. The people of India in exercise of their sovereign will gave themselves a democratic constitution for ensuring social, economic and political justice as also equality of status and opportunity to all the citizens. To achieve this end, Articles 14, 15 and 16 were incorporated in Part III of the Constitution relating to the Fundamental Rights. Whereas Article 14 ensures equality of opportunity and equal protection of laws to all citizens in general, Article 16 specifically confers upon them the same rights in matters relating to service. In other words, Article 16 is an instance of the application of the concept of equality enshrined in Article 14. However, both the Articles admit of a reasonable classification. In *State of Kerala and another v. N. M. Thomas and others* (1), A. N. Ray, C.J., observed as under:—

“There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection.”

(17) Article 16(4) specifically empowers the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State,

(1) A.I.R. 1976 S.C. 490.

is not adequately represented in the services under the State. This Article is not mandatory and is only permissive in nature. It does not confer any right on the members of the backward classes to claim that the Government should necessarily make reservations for them either at the initial stage of recruitment or at the stage of promotion, but being an enabling provision it confers a discretionary power on the State to make such reservations.

(18) Article 335 of the Constitution is, however, couched in the nature of an injunction to the State and makes it obligatory for the latter to take into consideration the claims of the members of the scheduled castes and the scheduled tribes in the making of appointments to the services and posts under the State consistently with the maintenance of efficiency of administration.

(19) At this stage, we might as well notice Article 46 of the Constitution which appears in Part IV relating to the Directive Principles of State Policy. This Article enjoins upon the State to promote with special care the educational and economic interests of weaker sections of society, particularly the members of the scheduled castes and the scheduled tribes. This directive has been issued to all the three organs of the State, namely, the legislative, the executive and the judicial. It, therefore, becomes the duty of the Court to keep the noble idea enshrined in this Article in the forefront while interpreting the executive instructions which have been issued by the State Government to narrow down the gap between the privileged sections of the society and those classes of the society who for well known historical reasons continue to suffer social and economic penury.

(20) Pursuant to the enabling power contained in Article 16(4) and the injunction contained in Article 335 of the Constitution, the State Government has framed the executive instructions which are under challenge in these petitions. *Vide* Annexure P/1, the Secretary to Government, Punjab, Scheduled Castes and Backward Classes, Social Welfare Department, wrote to the various Heads of Departments on September 12, 1963, that since the scheduled castes and backward classes were poorly represented in various service in the upper grades under the State Government, it was decided that except in the case of All India Services, 10% of the higher posts to be filled in by promotion should be reserved for the member of scheduled castes/tribes and backward classes (9% for members of the

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scheduled castes and tribes and 1% for the backward classes) subject to the conditions —

- (a) the persons to be considered must possess the minimum necessary qualifications; and
- (b) they should have at least satisfactory record of service.

(21) On August 23, 1966, these instructions were modified. For Class I and Class II appointments, the reservations were abolished. In the case of Class III and Class IV appointments to which were not directly made, the reservation was increased to 20% for the scheduled castes/tribes and 2% for backward classes. To give proper effect to the reservations, every appointing authority was directed to treat vacancies as reserved or unreserved according to the model roster to be maintained in the form of running account year to year. For example, if a promotion in a year stopped at point 6 in a cycle, promotion in the following year would begin at point 7. It was further ordered :

“If there are only two vacancies to be filled on a particular occasion, not more than one may be treated as reserved and if there be only one vacancy it should be treated as unreserved. If on this account, a reserved point is treated as unreserved, the reservation may be carried forward to the subsequent two recruitment years. Thus, where the cadre strength is small say less than 5 and there is one post to be filled by promotion, it need not be treated as reserved but if on this account a reserved point is treated as unreserved the reservation may be carried forward to the subsequent two recruitment years.”

(22) The model roster was provided *vide* Government letter dated March 24, 1964, which states—

“It has been decided that in a lot of 100 vacancies those occurring at serial number mentioned below fall to the share of the scheduled castes/tribes :—

1, 6, 11, 16, 21, 26, 31; 36, 41, 46, 51, 56, 61, 66; 71, 76, 81, 86, 91, 96.

Vacancies at serial numbers 27 and 77 should be treated as reserved for the members of backward classes. This would mean that in each of 6th and 16th blocks, there will be two reserved vacancies.”

(23) The controversy was raised before us about the meaning of the words "two recruitment years", but as shall be apparent hereinafter it is not necessary for us to resolve this controversy for the purposes of these cases.

(24) On October 11, 1974, the following instructions were issued :—

"I am directed to refer to the instructions contained in paragraph 2(4)(b) of Punjab Government circular letter No. 6872-WG-66/24917, dated the 23rd August, 1966, read with instructions contained in paragraph 2(iii) of Punjab Government circular letter No. 3378-SW (ASO)-67/22108, dated the 5th August, 1967. According to these instructions, in a cadre of less than five posts, if there be only one vacancy, it should be treated as 'UN-RESERVED', but if on this account a reserved point is treated as unreserved, the reservation is to be carried forward to the subsequent two recruitment years. In view, however, of the judgment of the Supreme Court of India in the case of *Arti Ray Choudhary v. Union of India and others* (2), it has not been decided that the reservation with respect to the solitary vacancy so unreserved and carried forward must be given effect to on the occasion next arising when a solitary vacancy occurs in the same cadre."

(25) We are not giving any finding on the preliminary objections raised in the written statements filed by the respondents because these objections were not pressed at the time of arguments. We shall now proceed to consider the grounds taken on behalf of the petitioners in their serial order.

(26) It is really not necessary to decide the question of the validity of the instructions pertaining to the reservation of promotional posts for the members of the backward classes because none of respondents Nos. 3 to 7 belongs to that class. All of them are members of the scheduled castes. No members of the backward classes has yet taken a march over the petitioners. It is settled law that this Court does not decide what are commonly known as legal conundrums or issues which are only likely to arise in the distant future.

(2) (1974) 1 Supreme Court Cases 87.

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(27) So far as the reservation of posts for the members of the scheduled castes/tribes is concerned, there is the initial presumption in favour of the proposition that are not properly represented in public services or else it would have been really unnecessary to insert Article 335 in the Constitution. Even otherwise, this matter has been finally set at rest by the observation made by Fazl Ali, J., who also spoke for the majority in *N. M. Thomas's case* (supra). These observations are—

“I might mention that so far as the members of the scheduled castes and tribes are concerned, in view of the constitutional provisions referred to above, this fact will have to be presumed and it was also so held in *General Manager, S. Rly. v. Rangachari* (3), that the class for which reservation is made is not adequately represented in the services under the State.”

(28) The first contention raised on behalf of the petitioners must, therefore, be repelled.

(29) The second ground of attack is also of no avail to the petitioners because of the authoritative pronouncement made by their Lordships of the Supreme Court in *State of Punjab v. Hira Lal and others* (4), in which the validity of the same instructions issued by the erstwhile State of Punjab were questioned. In that case the availability of the first promotional vacancy to the members of the scheduled castes was successfully challenged before a Division Bench of this Court. The judgment rendered by the Division Bench of this Court was reversed and the availability of the first vacancy for the members of the scheduled castes/tribes was held to be proper. Speaking for the Court, Hedge, J.; observed as under :—

“The extent of reservation to be made is primarily a matter for the State to decide. By this we do not mean to say that the decision of the State is not open to judicial review. The reservation must be only for the purpose of giving adequate representation in the services to the scheduled castes, scheduled tribes and backward classes. The exception provided in Article 16(4) should not make the rule embodied in Article 16(1) meaningless. But the burden of establishing that a particular reservation made by the

(3) A.I.R. 1962 S.C. 36.

(4) A.I.R. 1971 S.C. 1777.

State is offensive to Article 16(1) is on the person who takes the plea. The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of the reservation does not itself make the reservation bad. The length of the leap to be provided depends upon the gap to be covered."

(30) The apprehension of the petitioners that if the members of the scheduled castes keep on being promoted in accordance with the Government instructions, in about ten years' time about one half of the posts of Deputy Superintendents, 1/3rd posts of the Superintendents and 3/4th of the posts of Under Secretaries would be occupied by the members of the scheduled castes alone is really unfounded. At least, no material has been brought on record of these cases which may justify such an apprehension. Indeed, if such a calamity becomes imminent, it is reasonable to assume that the State Government which has issued these instructions would step in to modify the instructions or to do away with them completely. For the time being, the position of the service as explained in the written statement filed on behalf of respondent No. 1 is as under :—

Serial	Designation	Total Strength	Posts held by scheduled castes
1.	Clerks	430	56
2.	Assistants	395	63
3.	Deputy Superintendents	29	4
4.	Superintendents	57	1

(31) Considering the total strength of Clerks, Assistants, Deputy Superintendents and Superintendents working in the Secretariat, it cannot be said that in actual practice the members of the scheduled castes/tribes have entered the Government in such force as might tilt the balance against the petitioners in an unreasonable manner.

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(32) We may now consider the argument whether the executive instructions reserving posts for the members of scheduled castes/tribes and backward classes run counter to the Punjab Civil Secretariat (State Service Class III) Rules, 1952, or not. These Rules have been promulgated by the Governor of Punjab in exercise of powers under Article 309 of the Constitution. There is no provision in these Rules debarring the Government to make reservation of post for the members of scheduled castes/tribes. The opening words of Article 309 are "subject to the provisions of this Constitution." This implies that the rules framed under Article 309 of the Constitution would give way to the other provisions of the Constitution if and when a question regarding their conflict *inter se* is raised. The instructions issued under Article 16(4) read with Articles 46 and 335 have been described as constitutionally sanctified instructions by Krishna Iyer, J. in *N. M. Thomas's case (supra)*. It is not necessary that for affording relief to the members of the backward classes, the State should introduce legislative measures. So far as this Court is concerned, this matter stands concluded by a string of precedents. In *Hira Lal v. Chief Conservator of Forests, Punjab* (5), a Division Bench of this Court held as under :—

"The point before us, however, is not whether any statutory Services Rules, which might be governing promotions in the various departments, are contravened by any executive instructions, but whether provision for reservation of appointment or posts in favour of any Backward Classes of citizens can, under Cl. (4) of Article 16, be made by an administrative order or whether legislation is necessary. Clause (4) itself does not speak of any legislation required for the purpose and in this respect it may be considered with Clauses (3) and (5) of Article 16. In *M. R. Balaji v. State of Mysore* (6), it was laid down that the argument that provision under Clause (4) of Article 15 can be made by the State only by legislation must be repelled. It was observed that under Article 12 the State includes the Government and Legislature of each of the States, and so, it would be unreasonable to suggest that the State must necessarily mean the Legislature and not the Government. Besides, where the Constitution intended that a certain action should be taken by legislation and not by executive

(5) C.W. 271/66 decided on 29th November, 1966.

(6) A.I.R. 1968 S.C. 649.

action, it has adopted suitable phraseology in that behalf, and in this connection reference was made to Clauses (3) and (5) of Article 16. In this respect Clause (4) of Article 16 stands precisely in the same position as Clause (4) of Article 15."

(33) Though an appeal was taken to the Supreme Court against this judgment (Hira Lal's case supra), the aforementioned view was not reversed. On the other hand, the passage quoted above was expressly approved of by another Division Bench of this Court in *Mangal Singh v. Punjab (Now Haryana State), Chandigarh and others*, (7). If these instructions have been validly issued pursuant to a command of the highest order contained in the Constitution, their effect cannot be whittled down by the rules framed under Article 309 of the Constitution. It is settled law that the two provisions of law applicable to a subject should be interpreted in a harmonious manner. Both of them should be allowed to operate in the areas assigned to them. In the process of their interpretation, the repeal of one by the other or their inconsistency *inter se* should be avoided as far as possible. See in this connection *The Ambala Ex-Service-men Transport Co-operative Society Ltd., Ambala City and another v. The State of Punjab and others*, (8).

(34) The aforementioned considerations apart, rule 15 of the Punjab Civil Secretariat (State Service Class III) Rules, 1952 (hereinafter called the Rules), itself gives a pointer to this course being adopted. This rule reads as under :—

"Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

(35) The Government is the final authority to order that the provisions of the Rules should be relaxed with respect to any class or category of persons. The instructions have been issued by the Government itself and the reason why the issuance of these instructions was considered necessary is also contained therein. The learned counsel for the petitioners argued that for making a relaxation there should be an express declaration by the Government in that

(7) A.I.R. 1968 Panjab & Haryana 306.

(8) A.I.R. 1959 Punjab 1 (Full Bench).

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behalf. We see no force in this contention. In *P. Balakotaiah v. Union of India and others* (9), it was held that when an authority passes an order which is within its competence, the same cannot fail merely because it purports to have been made under a wrong provision if it can be shown to be within its powers under any other rule, and that the validity of an order should be judged on a consideration of its substance and not its form. This principle applies with full vigour to the instant case. If the Rules enable the Government to relax their provisions in favour of any class of persons, the relaxation made cannot be declared as illegal merely because the orders passed or the instructions issued do not expressly state that the relevant Rules should stand relaxed in the case of the field covered by the instructions.

(36) It was then submitted that respondents Nos. 4 to 7 had been promoted in violation of the Rules. The precise argument of the learned counsel for the petitioners is that only those members of the service who hold a substantive rank can be promoted to the higher rank. According to him, respondents Nos. 3 to 7 were holding the posts of Assistants on *ad hoc* basis and they could be promoted to the rank of a Deputy Superintendent after putting in 8 years service as substantive Assistants. This position is denied in the written statement. It is averred that there is no statutory provisions or Government instructions laying down that an Assistant must put in 8 years service before he can be promoted to the rank of a Deputy Superintendent. Further, respondents Nos. 3 to 7 were appointed on *ad hoc* basis on the ground that they were required to qualify in a departmental examination. This examination was later on struck down by this Court. The condition regarding the passing of examination having become unnecessary the services of respondents Nos. 3 to 7 were relaxed with retrospective effect. Even otherwise, it has been specifically mentioned in rule 8(1) of the Rules that the period of duty spent on a higher post can be allowed to count towards the period of probation fixed under the Rules. This shows that the persons working on probation can in fact be promoted to the higher ranks.

(37) The instructions cannot be attacked on the ground that they have been issued by the Secretary to Government, Punjab, Scheduled Castes and Backward Classes, Welfare Department. Under

Article 166 of the Constitution all executive action of the Government of a State has to be treated to have been taken in the name of the Governor. The orders and other instructions made and executed in the name of the Governor have to be authenticated by a Secretary to the Government. Such an order cannot be called into question on the ground that it has not been made or executed by the Governor. Even if an order or an instrument is not made strictly in accordance with Article 166 of the Constitution, it is open to the State to show that the order or the instrument issued has received the attention of the Council of Ministers or the Minister-in-charge of the concerned portfolio. Mr. Sibal, the learned counsel for respondent No. 1, has brought to our notice a certified copy of the confidential decision taken by the Council of Ministers on March 6, 1974, in which it was decided to introduce the relevant instructions in which the percentage of reservation of posts for scheduled castes and backward classes was enhanced to 25 per cent. We are accordingly of the view that the impugned instructions have been issued under lawful authority.

(38) Last of all, it was argued that the reservation of seats for the members of the scheduled castes/tribes adversely affects the conditions of service of the petitioners and before increasing this percentage of reservation, the State Government should have obtained prior approval of the Central Government under section 82 of the Punjab Reorganisation Act, 1966. In the *State of Mysore and another v. G. N. Purohit and others* (10), the Supreme Court held that chances of promotion are not conditions of service. This view was followed with respect by a Division Bench of this Court of which I was a member in a case relating to similar executive instructions in *Balbir Singh v. State of Punjab* (11). It was held that chances of promotion especially when their availability is remote and speculative in nature cannot be regarded as conditions of service. This contention raised on behalf of the petitioners is accordingly repelled.

(39) We are of the view that Civil Writs Nos. 6409 of 1975 and 996 of 1974 are devoid of any merit.

(40) In Civil Writ No. 998 of 1976, one additional point has been raised. The petitioner in that case joined service in the Industries

(10) 1967 S.L.R. 753.

(11) 1975 (1) S.L.R. 241.

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Department as an Inspector, Weights and Measures on September 16, 1957. He was confirmed in that post on March 12, 1966. One post of an Assistant Controller, Weights and Measures, fell vacant on January 1, 1976. The petitioner alleges that being the senior-most employee of the Department, he was entitled to fill in that post because only one vacancy could not be reserved for the members of the scheduled castes. He came to know that the State Government had accepted the representation of respondent No. 5 Shri Lachhman Dass and ordered him to be appointed against that post with effect from February 13, 1976. According to the petitioner, the first vacancy in the rank of an Assistant Controller, Weights and Measures, fell vacant in July, 1970. That means the solitary vacancy could not be reserved in view of the instructions contained in Annexure P. 1. No vacancy occurred in the following two years, i.e. 1971 and 1972. Another vacancy arose in April, 1973, which also went to a non-scheduled caste candidate. The third vacancy occurred in August, 1974, and the 4th in December, 1974. It is alleged that all these posts were filled in by non-scheduled castes candidates. The grievance of the petitioner is that the 5th vacancy which fell vacant in January, 1976, should according to the roster go to him.

(41) This position is, however, not admitted in the written statement filed on behalf of the State. It has been pointed out therein that the first vacancy which occurred in July, 1970, was actually filled in by promoting an officer in May, 1971. In 1973 also there was only one vacancy but in 1974, two vacancies occurred—one in August, 1974 and the other in December, 1974. Since respondent No. 5 was entitled to claim this vacancy, the same was given to him.

(42) Now in *Arati Ray Choudhury v. Union of India and others*, (supra), their Lordships of the Supreme Court have held that the reservation with respect to the solitary vacancy which is unreserved in the aforementioned circumstances should be carried forward for a period of two recruitment years. If the rule laid down by their Lordships of the Supreme Court is properly applied, then respondent No. 5 was entitled to get the vacancy which occurred in April, 1973, which became available admittedly within two years of May, 1971, when Shri Dilbagh Singh, a non-scheduled caste candidate, was appointed as Assistant Controller, Weights and Measures. If respondent No. 1 did not get his rightful due at that time and was given a vacancy which fell vacant in 1974, his grievance merely remains partially redressed. No injustice much less manifest injustice has been caused to the petitioner on this count. This Court in exercise of

jurisdiction under Article 226 of the Constitution does not take into account mere technicalities and comes to the aid of a petitioner only if he establishes that grave injustice has been done to him. Had respondent No. 5 got the vacancy in April, 1973, the petitioner could possibly have not levelled a challenge against his promotion. If by a quirk of fate justice was not done to respondent No. 5 earlier, this Court cannot lend its hands to further postpone the promotion of respondent No. 5.

(43) We are accordingly of the view that the petitioner in Civil Writ No. 998 of 1976 has also not been able to make out a case for the grant of any relief to him.

(44) For the reasons mentioned above, all the three petitions are dismissed but in the circumstances the parties are left to bear their own costs.

O. Chinnappa Reddy, A.C.J.—I agree with **Sharma J's** conclusions.

Surinder Singh, J.—So do I.

N. K. S.

FULL BENCH

LETTERS PATENT APPEAL

Before S. S. Sandhawalia, Prem Chand Jain & Gurnam Singh, JJ.

THE PUNJAB UNIVERSITY,—Appellant.

versus

SUBASH CHANDER AND ANOTHER,—Respondents.

Letters Patent Appeal No. 352 of 1975

September 7, 1976.

Punjab University Act (VII of 1947)—Sections 31(1) and 31(2) (n)—Punjab University Calendar (1966) Volume II—Regulations 2, 25, 28 and 29—Senate—Whether empowered to frame or alter regulations retrospectively—Faculty of Medical Science—Studies and every University examination in—Whether constitute one consolidated and composite course.