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

(19) Before parting with the judgment, I would obesrve 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—Rl. 2.2(b) proviso 3—Providing of limitation of 4 years from date of

event—Rule 2.2 does not impose embargo on criminal prosecution—Prosecution does not fall within the meaning of conditions of services—Prayer for quashing of FIR on the ground of delay rejected—Challan not put up—Court issuing directions to the State to take decision within 2 months whether challan shall be filed in Court—In case no such decision taken F.I.R. to stand quashed.

Held, that Rule 2.2 of the Punjab Civil Services Rules Volume II shall apply and the Government will not be entitled to exercise the right conferred on it by the substantive provision contained in clause (b) with regard to pension of such a Government servant. Therefore, irrespective of the fact that the proceedings so far as criminal trial are not quashed, it shall be deemed to have been quashed so far as the grant of pension and other retiral benefits to petitioner No. 1 are concerned.

(Para 9)

Further held, that I do not find it proper to quash the FIR so far as the proceedings in the criminal trial are concerned. However, it will not be proper to give long rope to the respondent so that they can keep the sword of the prosecution on the accused. There may be delay for some reasons but when the present petition was filed in the court, the respondent should have become alert and taken a positive decision as to whether the petitioners are to be challaned or not. In case the petitioners are to be challaned, certain formalities will also be required. Therefore, it will be proper to give two months time to the respondent to take decision in this regard.

(Para 10)

Further held, that the FIR is not quashed and the respondent should take a decision within two months from today as to whether they should file challan in the court or not. Therefore, it goes without saying that if the challan is not presented against the petitioners within the said period of two months, the FIR shall stand quashed.

(Para 11)

A. S. Kalra, Advocate, *for the petitioners*.

G. S. Gill, Assistant Advocate General, Punjab, *for the respondent*.

JUDGMENT

(1) This is a petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for quashing F.I.R. No. 5 dated 19th January, 1995, Police Station Vigilance, Patiala annexure P/1 and the further proceedings arising out of the same.

(2) Petitioner No. 1 Bhag Singh was posted as Block Primary Education Officer, Block Samrala (1) and was also Drawing and Disbursing Officer. Petitioner No. 2 Balwant Singh was working as Clerk in Government Primary School. Petitioner No. 1 retired in the month of March, 1990.

(3) It is contended that the allegations in the F.I.R. are that one Piara Singh, teacher, gave application to petitioner No. 2 in the presence of petitioner No. 1 for withdrawing Rs. 4,000 from the G.P. Fund as refundable advance and Rs. 4,000 from G.P. Fund non-refundable advance. It is alleged in the FIR that the amount of Rs. 4.000 was withdrawn by the petitioners and one Kaka Singh, teacher on 9th February, 1989 and that another amount of Rs. 4,000 was withdrawn on 19th May, 1989 by the same persons by forging signatures of Piara Singh, teacher. It is also alleged that Rs. 4.000 was paid back by them to said Piara Singh, complainant as agreed and remaining amount was not paid.

(4) Learned counsel for the petitioners has argued that in view of rule 2.2 of the Punjab Civil Services Rules Volume II (hereinafter referred to as 'the Rules) the prosecution cannot be contained against petitioner No. 1 who has retired from service. Rule 2.2 of the Rules is reproduced as under :—

> "The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement.
>
> Provided that
>
> (1) xx xx xx xx
>
> (2) xx xx xx xx
>
> (3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose on an event which took place more than four years before such institution."

Explanation.—For the purposes of this rule :

(a) xx xx xx xx

(b) a judicial proceeding shall be deemed to be instituted.

(c) in the case of a criminal proceedings on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made................."

Learned counsel for the petitioners has relied on proviso (3) of Rule 2.2(b) of the Rules. He has also relied on the case of *State of Punjab* v. *Sain Dass and others* (1), wherein learned Single Judge of this Court has held that the provision of rule 2.2 of the Rules is a special provision governing Government servants only whereas the provision in Section 468 of the Cr.P.C. is general and special provision would take predence over the general provision.

(5) Learned counsel for the petitioners has also relied on the case of *Gazula Dasaratha Rama Rao* v. *State of Andhra Pradesh and others* (2), wherein it has been held that even if it is assumed for the purpose of argument that Articles 309 and 310 and other Articles in Chapter I, Part XIV of the Constitution relate only to an organised public service like the Indian Administrative Service etc. and ex-cadre posts under a direct contract of service which have not yet been incorporated into a Service, the scope and effect of Clauses (1) and (2) of Article 16 cannot be cut down by reference to the provisions in the Services Chapter of the Constitution. Relying on this principle, learned counsel argued that the rules have been made under the Constitution and, therefore, have got the binding nature.

(6) Learned counsel for the petitioners has also cited before me the case of *Sardul Singh* v. *State of Punjab* (3). In that case the F.I.R. was lodged in the year 1981. The officer was allowed to retire in the year 1990 and the challan was presented in the year 1991. It was held in that case that trial was barred under rule 2.2 of the Rules which prescribed limitation of four years from the date of event, and, therefore, the F.I.R. was quashed.

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(1) 1988 C.C. Cases 547.

(2) A.I.R. 1961 S.C. 564.

(3) 1992 (2) R.C.R. 417.

(7) However, contrary view has been taken by the Supreme Court in the case of *State of Punjab* v. *Kaliash Nath* (4). It has been held by the Supreme Court in that case that provision relating to prosecution does not fall within the term "conditions of service" as mentioned under Article 309 of the Constitution and there is no embargo on prosecution after the expiry of 4 years as mentioned in Rule 2.2 of the Punjab Civil Services Rules. It is further held that even on a plain reading of Rule 2.2, it is apparent that the intention of framing the said rule was not to grant immunity from prosecution to a Government servant, if the conditions mentioned therein are satisfied. It has also been held that the said rule 2.2 deals with ordinary pension and that there can be no manner of doubt that making provision with regard to pension falls within the purview of "conditions of Service" and that the embargo on prosecution spelt out by the High Court is not to be found in the main rule 2.2 but in the third proviso to the said rule. It was further held that the purpose can be achieved if the said proviso by adopting the rule of reading down is interpreted to mean that even if a Government servant is prosecuted and punished in judicial proceedings instituted in respect of cause of action which arose or an event which took place more than four years before such institution, the Government will not be entitled to exercise the right conferred on it by the substantive provision contained in clause (b) with regard to pension of such a Government servant. This judgment explains the meaning of the proviso and, therefore, the principle laid down in the case of *State of Punjab* v. *Sain Dass and others* (supra) cannot be said to be a good law in view of the decision of the Supreme Court in the case of *State of Punjab* v. *Kailash Nath* (Supra).

(8) However, in the case of *State of Punjab* v. *Kailash Nath* (Supra). it has been held by the Hon'ble Supreme Court that the High Court was right in quashing the stale proceedings where the prosecution was instituted after six years of the accrual of cause of action. However, in the subsequent case of *Ganesh Narayan Hegde* v. *S. Bangarappa and others* (5), the Hon'ble Supreme Court held that the complainant was not responsible for the delay and when there was a delay of 12 years and there was no suggestion that the complainant was responsible for the delay and no such contention was alleged before the High Court, the prosecution should not be

(4) 1989 (1) S.L.R. 12.

(5) 1995 S.C.C. (Crl.) 634.

quashed. Slightly different is the present case where it has been argued that the State is responsible for the delay. In what way, the State is causing delay, is not shown. However, it has been contended by State counsel that the delay has been occasioned because of lengthy nature of the enquiry and investigation and dilatory tactics adopted by the accused and due to non-cooperation of the department concerned.

(9) Looking to the nature of the present case and applying the judgments of both the cases decided by the Hon'ble Supreme Court, this court will have to decide the question of quashing under two sub heads viz :

(i) quashing so far it relates to the pensionary and other retiral benefits ;

(ii) Quashing in regard to the trial in the criminal court.

So far as the first point is concerned, because of the above mentioned rulings of the Supreme Court, it is clear that the rule 2.2 of the Rules shall apply and the Government will not be entitled to exercise the right conferred on it by the substantive provision contained in clause (b) with regard to pension of such a Government servant. Therefore, irrespective of the fact that the proceedings so far as criminal trial are not quashed, it shall be deemed to have been quashed so far as the grant of pension and other retiral benefits to petitioner No. 1 are concerned.

(10) Regarding the second point, considering the effect of both the above cited judgments of the Hon'ble Supreme Court and the facts of the present case, I do not find it proper to quash the FIR so far as the proceedings in the criminal trial are concerned. However, it will not be proper to give long rope to the respondent so that they can keep the sword of the prosecution on the accused. There may be delay for some reasons but when the present petition was filed in the court, the respondent should have become alert and taken a positive decision as to whether the petitioners are to be challenged or not. In case the petitioners are to be challenged, certain formalities will also be required. Therefore, it will be proper to give two months time to the respondent to take decision in this regard.

(11) In view of the above findings, this petition stands partly allowed and the proceedings shall be deemed to have been terminated so far the pension and other retiral benefits of petitioner No. 1 are

concerned. However, the FIR is not quashed and the respondent should take a decision within two months from today as to whether they should file challan in the court or not. Therefore, it goes without saying that if the challan is not presented against the petitioners within the said period of two months, the FIR shall stand quashed. Order Dasti to AAG, Punjab.

R.N.R.

Before Jawahar Lal Gupta, J.

MOHAN LAL MONGIA,—*Petitioner.*

versus

F.C.I. AND OTHERS,—*Respondents.*

C.W.P. 16609 *of* 1995.

27th November, 1996.

Constitution of India, 1050—*Arts.* 226/227—*Selected candidate—Whether such a candidate has vested right to post—Order predominently administrative—Such order also subject to judicial review.*

Held, that mere selection does not give an indefeasible right to a person to be appointed to a post.

(Para 6)

Further held, that in the totality of circumstances, it cannot be said that the action of the respondents in taking the view that the petitioner was not suitable for appointment was arbitrary or unfair so as to call for interference under Article 226 of the Constitution. The order is predominently administrative in character. Even when it is subjected to judicial review, the Court can interfere only when it is found that the authority had acted arbitrarily. Such is not the situation in the present case. The view taken by the authority is a possible one.

(Para 9)

Malkeet Singh, Advocate, *for the petitioner.*
Nemo, *for the respondents.*