Haryana. Both the writ petitions are dismissed. No costs.

S. C. Mittal, J.—I agree.

Surinder Singh, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy, Prem Chand Jain and M. R. Sharma, JJ.

MR. Y. K. BHATIA,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No. 127 of 1976.

September 23, 1976.

Constitution of India 1950—*Article* 16—*Government employee temporarily appointed to a post or temporarily promoted to a higher post—Termination of the services or reversion of such an employee while his juniors are allowed to continue—Whether offends Article* 16.

Held, that the termination of the services of a temporary Government employee does not offend Article 16(1) of the Constitution of India merely because his juniors are retained in service and that the reversion of a Government employee temporarily promoted to a higher post does not also offend Article 16(1) merely because his juniors are not also reverted. Of course, it will be open to the persons affected in individual cases to establish discriminatory treatment which cannot be explained except on the basis of 'malice in law' or 'malice in fact'. Without any suggestion of 'malice in law' or 'malice in fact', there can be no question of invoking the aid of Article 16(1) of the Constitution against an order of termination of service or reversion of a temporary employee merely because juniors are continuing.

(Para 5)

(11) A.I.R. 1974 Pb. & Haryana 279.

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

(i) *to produce the complete records of the case;*

(ii) *the order dated 18th December, 1975, conveyed,—vide Letter No. 7609/ECM, dated 30th December, 1975, at Annexure 'P-2' be quashed;*

(iii) *it be declared that the petitioner continues to be in service and is entitled to all the consequential reliefs in the nature of arrears and salary, etc.;*

(iv) *it is further prayed that pending the disposal of the writ petition, the implementation/operation of the order at Annexure 'P-2' be stayed;*

(v) *on account of the acute paucity of time the petitioner is not in a position to serve the notice of motion, thus it is prayed that this may be dispensed with;*

(vi) *the petitioner be exempted from filing the certified copies of Annexures at 'P-1' and 'P-2';*

(vii) *this Hon'ble Court may pass any other Order which it deems just and fit in the circumstances of the case;*

(viii) *the costs of this petition be awarded to the petitioner.*

J. L. Gupta, Advocate, with G. C. Gupta, Advocate, *for the Petitioner.*

H. N. Mehtani, Senior Deputy Advocate-General, (H), *for the Respondents.*

JUDGMENT

(1) O. Chinnappa Reddy, J.—These three Writ Petitions (C.W.P. Nos. 127, 29 and 2236 of 1976) raise a common question, whether the termination of the services of a Government employee temporarily appointed to a post or the reversion of an employee temporarily promoted to a higher post offends Article 16(1) of the Constitution, if his juniors, also appointed temporarily, are continued in service, or if his juniors, also promoted temporarily, are continued in higher posts. Shri Jawahar Lal Gupta, learned counsel, argued that the Fundamental Right guaranteed by Article 16(1) of the Constitution was available not only at the stage of initial recruitment but at all subsequent stages incidental to employment

such as promotion, reversion, termination of service etc. He urged that the rule of 'last come, first go' was essentially a rule of 'fair-play' which was required by law to be observed as much in Government employment as in Industrial employment. If without adequate explanation the rule was departed from and a senior temporary employee's services were terminated while retaining his juniors, there was a violation of the Fundamental Right of equality of opportunity guaranteed by Article 16(1) of the Constitution. According to the learned counsel whenever a temporary employee's services were to be terminated, the claims of all temporary employees for retention in service had to be considered and thereafter only it was to be determined as to who was to go. Shri Jawahar Lal relied upon certain decisions to which we shall presently refer.

(2) A certain amount of confusion has been created by the occasional importation of the principle of 'last come, first go' from Industrial Law into the Law relating to Public Servants. The primary interest of Industrial Law is the ensuring of industrial peace. A frequent cause of Labour unrest being the victimization of employees in the guise of retrenchment, the rule of 'last come, first go' has been evolved. The primary object of the law relating to Public servants is the securing of efficiency in public service, the interest to be served being the public interest. There is thus a basic difference between the goals of industrial law and the law relating to public servants. It will not therefore be right to import, rigidly, into the law relating to public servants the principles applied in Industrial Law, however, salutary they may be. The rule 'last come, first go', so well recognised in Industrial Law, is undoubtedly a salutary rule. It is perhaps desirable to apply it to public servants too. Indeed, very often it is so applied. But it is one thing to say that it is desirable to apply the rule of 'last come, first go' in given situations and that it is often so applied, it is quite a different thing to say that the failure to apply the rule leads to the necessary inference of denial of equal opportunity under Article 16(1). To say so would be to elevate the rule to a rule of universal application, which it is not. The Supreme Court did not say anything different in *Ramaswamy* v. *I. G. of Police* (1), on which Shri Jawahar Lal Gupta placed considerable reliance. The observations on which the learned counsel relied were:—

> "The rule (Rule 2 of the Mysore Seniority Rules), therefore, cannot be held as expressly providing for the principle of

(1) A.I.R. 1966 S.C. 175.

> "last come, first go" with which one is familiar in industrial law . . . . Even so, it may be conceded that when reversion takes place on account of exigencies of public service the *usual* principle is that the juniormost persons among those officiating in clear or long term vacancies are *generally* reverted to make vacancies for the senior officers coming back from deputation or from leave, etc. Further ordinarily as promotion on officiating basis is generally according to seniority, subject to fitness for promotion, the juniormost person reverted is *usually* the person promoted last. This state of affairs prevails unless there are extraordinary circumstances, as in the present case."

The observations of the Supreme Court were no more than mere statements of fact concerning the general practice in such matttrs. They should not be confused with statements of law. The Supreme Court was merely stating that though the rule of 'last come, first go', was not a rule of law it was generally observed in practice except under extraordinary circumstances. The Supreme Court neither sanctified the rule as a rule of law nor declared its non-observance a violation of Article 16(1).

(3) Shri Jawahar Lal placed very strong reliance on *State of Mysore* v. *Kulkarni* (2) and *State of Uttar Pradesh* v. *Sughar Singh*. (3). In the first case, which was decided by Ray, C.J. and Beg J., it was found, on the facts that officers who were junior to and less meritorious than the respondents had stolen a march over them, because of a certain misapprehension in the mind of the Government. The order of reversion of the respondents was, therefore, held to be based on legally extraneous grounds and in violation of Article 16(1). The decision is of no help to the petitioner. In the second case which was decided by Mathew and Beg, JJ., the facts, as the learned Judges themselves said, were very peculiar. From out of a group of about 200 officers most of whom were junior to Sughar Singh, he alone was reverted, not for any administrative reason but because of an adverse entry made in his confidential character roll. On the facts and circumstances of the case it was found that the reversion was in truth a measure of punishment which was imposed without observing the

(2) 1972 S.L.R. 795.
(3) 1974 (1) S.L.R. 435.

requirements of Article 311. Some observations were also made suggesting that there was an infringement of Articles 14 and 16 of the Constitution. It was said :—

"The respondent's counsel then challenged the order of reversion on another ground. He pointed out that at least 200 Head Constables who had taken training as Cadet Sub-Inspectors of Armed Police at Sitapur after the respondent and who were junior to the respondent have still been allowed to retain their present status as Sub-Inspector and have not been reverted to their substantive post of Head Constable. Unless this can be justified as a measure of punishment, the reversion of the respondent would amount to discrimination in contravention of the provisions of Articles 14 and 16 of the Constitution. The facts on which this contention is based are found in paragraphs 7 and 20 of the petition. The contention itself is to be found in ground No. 3 of the writ petition. The complaint, we must say, is one which has to be sustained. No possible explanation in this extreme form of discrimination has been shown to us. Indeed, it appears from the judgment of the third learned Judge, who heard the petition in the High Court that in answer to a question put by him, the standing counsel appearing for the State clearly stated that the order of reversion was a result of the adverse entry made in the appellant's confidential character roll. If this statement of the learned standing counsel has to be accepted, it is impossible to resist the suggestion that the respondent's order of reversion was really an order of punishment in disguise in which event the order must be struck down for non-compliance with the requirements of Article 311 of the Constitution. The appellant in fact faces a dilemma. If it was not a case of punishment, it becomes difficult to explain why this discrimination was made against the respondent vis-a-vis at least 200 other officers who were junior to him in the substantive cadre. That would make the order liable to be struck down as violative of Article 16 of the Constitution. Reference may be made to *State of Mysore* v. *P. R. Kulkarni and others* (2) *ibid* where an order of reversion was struck down by this Court on the ground of "unjustifiable discrimination" which brought the order within the mischief of

> Articles 14 and 16 of the Constitution. . . . . In the instant case we have no doubt in our mind that the peculiar circumstances that from out of a group of about 200 officers most of whom are junior to respondent, the respondent alone has been reverted to the substantive post of Head Constable makes it absolutely clear that there was no suggestion at any time made on behalf of the appellant that the post had been abolished or that the respondent was, for administrative reasons, required to go back to his own post of Head Constable. This circumstance only corroborates what the learned standing counsel for the State admitted before the High Court that the foundation of the order of reversion is the adverse entry made in his character roll. In this view of the matter, we have no doubt that the order was passed by way of punishment, though all outward indicia show the order to be a mere order of reversion. Even if it were not so, we have no doubt that the order would be liable to be quashed on the ground of contravention of Articles 14 and 16 of the Constitution."

Superficially, the observations appear to land some support to Shri Jawahar Lal's submission. A closer scrutiny shows that they do not and that they were made in relation to the 'peculiar' facts of that case. Fortunately, we are relieved of the responsibility of having to explain those observations. Beg, J., who was a party to the decision has himself explained the decision and the observations in *Regional Manager* v. *Pavan Kumar* (4). Beg, J. first observed:—

> "One additional or different fact can make a world of difference between conclusions in two different cases even when the same principles are applied in each case to similar facts."

Then referring to the facts of *Sughar Singh's case,* Beg, J. observed as follows :—

> "On this view of the case it was not really necessary for this Court to consider whether the reversion of Sughar Singh was contrary to the provisions of Article 16 also. Nevertheless, this Court held there, alternatively; after referring to *State of Mysore* v. *P. R. Kulkarni* (5) that the

(4) A.I.R. 1976 S.C. 1766.

(5) A.I.R. 1972 S.C. 2170.

action taken against Sughar Singh also resulted in a violation of the provisions of Articles 14 and 16 of the Constitution. It seems to us to be clear, after examining the record of Sughar Singh's case (supra), that what weighed with this Court was not only that there was a sufficient "element of punishment" in reverting Sughar Singh for a supposed wrong done, from which the order of reversion could not be divorced, so that Article 311(2) had to be complied with, but, there was also enough of an impropriety and unreasonableness in the action taken against Sughar Singh, solely for a very stale reason, which had become logically quite disconnected to make out a case of "malice in law" even if it was not a case of "malice in fact". If an authority acts on what are, justly and logically viewed, extraneous grounds, it would be such a case. All these aspects of the case were kept in view by this Court when it recorded the conclusion :

> "In this view of the matter, we have no doubt that the order was passed by way of punishment, though all outward indicia show the order to be a mere order of reversion. Even if it were not so, we have no doubt that the order would be liable to be quashed on the ground of contravention of Articles 14 and 16 of the Constitution."

We do not think that Sughar Singh's case (AIR 1974 SC 423) in any way, conflicts with what has been laid down by this Court previously on Article 311(2) of the Constitution or Article 16 of the Constitution. We would, however, like to emphasize that, before Article 16 is held to have been violated by some action *there must be a clear demonstration of discrimination between one Government servant and another, similarly placed, which* cannot be reasonably explained except on an assumption or demonstration of "malice in law" or "malice in fact". As we have explained, acting on a legally extraneous or obviously misconceived ground of action would be a case of "malice in law". Orders of reversion passed as a result of administrative exigencies, without any suggestion of malice in law or in fact, are unaffected by Sughar Singh's case (supra).

They are not vitiated merely because some other Government servants, juniors in substantive rank, have not been reverted."

The learned Judge then referred to *S. C. Anand* v. *Union of India* (6), where the Supreme Court had laid down that no question of applying Article 14 or 16 could arise where the termination of service was in terms of a contract of service and to *Champaklal Chiman Lal Shah* v. *Union of India* (7), where the Supreme Court had held that a rule providing for termination of services of temporary servants was not hit by Article 16.

(4) In the light of the clear statement of law contained in *Regional Manager* v. *Pavan Kumar* and the explanation of what appeared to be a discordant note struck in Sughar Singh's case, it is not really necessary to refer to other cases decided by the Supreme Court on this question. We may, however, mention that the sentences underscored by us in the passage extracted from Beg J's. judgment were an echo of what had been said earlier by the Supreme Court in *Union of India* v. *Pandurang Kashinath Morey* (8). In that case, a Constitution Bench of five Judges of the Supreme Court had observed as follows :—

"The arbitrary and discriminatory nature of the termination of service must, however, first be established before the Article can have any application.....All that appears from the evidence led in the case is that many employees junior to the respondent had been retained in service while his service had been terminated. This, in our view, is entirely futile for establishing discrimination. .... In these circumstances, the fact that the service of the respondent was terminated while employees junior to him were retained in service does not by itself prove unequal treatment and there is nothing else on which the respondent has relied to establish discrimination."

(6) A.I.R. 1953 S.C. 250.
(7) A.I.R. 1964 S.C. 1854.
(8) A.I.R. 1962 S.C. 630.

We may also refer to *Union of India* v. *Prem Parkash Midha* (9), where the Supreme Court observed :—

> "The District Court also held that when the service of the respondent was terminated and officers junior to him were retained in service, the respondent was denied equal opportunity to hold public service under Art. 16 of the Constitution. But there is nothing in Art. 16 of the Constitution which supports the view expressed by the learned District Judge. By Art. 16 all citizens are entitled to equality of opportunity in matters relating to employment or appointment to any office under the State. By merely terminating the employment of the respondent, the respondent was not denied of equal opportunity to hold public service. Under Article 16 of the Constitution it is not one of the fundamental rights that a person who is an employee of the State shall be entitled to continue in service and that his employment shall not be terminated so long as persons junior to him remain in service."

In another case, *Raj Kumar* v. *Union of India and others* (10), the Supreme Court observed :—

> "There are only two questions raised by the petitioner in his writ petition. One is that certain persons junior to him have been continued in service while his services have been terminated and that it offends Article 14. The termination of the appellant's services was not on the ground of retirement. The question of offending Article 14 does not therefore arise. When action is taken against him under the relevant rules which enable the authorities concerned to terminate his temporary service without assigning any reason the Court would not go into the reason which led to the appellant's services being terminated."

(5) Having regard to the abundance of pronouncements by the Supreme Court on this question, we consider it unnecessary to

(9) 1969 S.L.R. 655.

(10) 1975 (1) S.L.R. 775.

refer to the judgments of the various High Courts to which our attention was invited by Shri Jawahar Lal Gupta. We are firmly of the opinion that the termination of the services of a temporary Government employee does not offend Article 16(1) of the Constitution merely because his juniors are retained in service and that the reversion of a Government employee temporarily promoted to a higher post does not also offend Article 16(1) merely because his juniors are not also reverted. Any other conclusion will only lead to confusion since there may be thousands of temporary employees in a State and to insist that the comparative merits of all the temporary employees should be considered before the services of any employee are terminated or before any one who is temporarily promoted is reverted will be to ask the impossible. Of course, it will be open to the persons affected in individual cases to establish discriminatory treatment which cannot be explained except on the basis of 'malice in law' or 'malice in fact'. Without any suggestion of 'malice in law' or 'malice in fact', there can be no question of invoking the aid of Article 16(1) of the Constitution against an order of termination of service or reversion of a temporary employee merely because juniors are continuing.

(6) Shri Jawahar Lal Gupta attempted to argue that an order of reversion of a senior temporary employee without reverting his juniors should necessarily be branded as an order entailing penal consequences and, therefore, should be declared as offending Article 311 of the Constitution. There is no foundation for this extreme submission. The decision in *P. C. Wadhwa* v. *Union of India* (11) on which Shri Gupta relied, does not support this submission. The pronouncements of the Supreme Court in the several cases noticed by Beg, J. in paragraph 12 of the decision in *Regional Manager* v. *Pawan Kumar*, are all against the submission. We have no hesitation in overruling the submission.

(7) In C.W.P. No. 2236 of 1976, Shri Kuldip Singh argued that while the services of the juniors of the petitioner were regularised in superior posts, the petitioner was reverted without his claim for regularization in the superior post ever being considered. This has been denied in the return filed on behalf of the respondents where it has been stated that the case of the petitioner was considered

(11) A.I.R. 1964 S.C. 429.

along with others but the petitioner was not found suitable for promotion. There is no merit in the submission of Shri Kuldip Singh.

(8) The three writ petitions are dismissed. There will be no order as to costs.

Prem Chand Jain, J.—I agree.

M. R. Sharma, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia, Prem Chand Jain and A. S. Bains, JJ.

BHOOP SINGH,—*Petitioner.*

versus

BAR COUNCIL OF PUNJAB AND HARYANA THROUGH ITS SECRETARY ETC.,—*Respondents.*

Civil Writ Petition No. 6426 of 1975

September 30, 1976.

Bar Council of Punjab and Haryana Election Rules 1968— *Rules* 3(*K*), 28, 33 *and* 34(8)—*Constitution of India* 1950—*Article* 226—*Election in accordance with the system of proportional representation by means of a single transferable vote—Infraction of a single statutory rule—Whether invalidates the whole election—Ballot papers bearing the first preferences of a candidate stolen in the course of counting—Returning Officer declaring such papers as 'exhausted papers'—Such declaration—Whether in accordance with rule* 3(*K*)—*Question of establishing that the result of such election has been materially affected—Whether possible—Such concept—Whether to be read in Rule* 34—*Discretionary relief under the extra-ordinary writ jurisdiction—When can be claimed—'Manifest injustice'—What amounts to in electoral context—Stated.*

Held, that it is only in the case of such fundamental infirmities like the commission of a corrupt practice, the improper rejection of