

2. Important case reference on reservation in employment and allied matters.

(i) Indra Sawhney etc. etc. Petitioners v. Union Of India and others etc. etc., Respondents (Reported in AIR 1993 Supreme Court 477):

The matter was heard by a nine-member Bench consisting of MH KANIA, C.J., MN VENKATACHALIAH, S. RATNAVEL PANDIAN, Dr. T. K. THOMMEN, A. M. AHMADI, KULDIP SINGH, P. B. SAWANT, R. M. SAHAI AND B.P.JEEVAN REDDY, JJ.¹

Summary of salient points in the judgment :

(A) Constitution of India , Arts 14-18—Doctrine of equality – Scope – Arts 14-18 are to be understood in light of Articles contained in part IV of Constitution. [Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C.J. MN Venkatachaliah, AM Ahmadi JJ.]

(Para 4)

(B) Constitution of India, Arts 335, 341, 342 – Scheduled Caste and Scheduled Tribe – Claim in public employment – To be considered consistently with maintenance of efficiency – Similar consideration will also apply while considering claims of other Backward Classes and Other Weaker Sections. [Per BP Jeevan Reddy, J (for himself and on behalf of MH Kania, C.J. and MN Venkatachaliah, AM Ahmadi, JJ.)]

(Para 8)

(C) Constitution of India, Art. 141 – stare decisis – Relevance and significance – certainty, consistency and continuity are highly desirable features in law – Decision that has stood test of time and has never been doubted – Has to be respected [Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C.J., and MN Venkatachaliah, AM Ahmadi, JJ.)]

Precedents – Law of long standing to be respected.

(Para 26A)

(D) Constitution of India, Art 32 – Jurisdiction – Scope – Complex social, constitutional and legal questions upon which there has been sharp division of opinion in society – Could more satisfactorily be settled by political processes – Reference of such question to Court – Shows disinclination of the executive to grapple with these sensitive issues as also the confidence reposed in Court

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)]

(Para 26A)

¹ In this case the Judges of the Supreme Court differ in their views. The majority view is taken by M. H. Kania, C. J., M. N. Venkatachaliah, S. Ratnavel Pandhian, A. M. Ahmadi, P. B. Sawant and B. P. Jeevan Reddy, JJ and the minority view by Dr. T. K. Thommen, Kuldip Singh, R. M. Sahai, JJ.

(E) **Constitution of India, Art 340 – Backward Classes Commission – Conclusions given in its report – Cannot always be scientifically accurate – sufficient if relevant data and material given in report justify the conclusions. [Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)] AIR 1972 SC 1375, Approved (Para 39)**

(F) **Constitution of India, Arts. 16(4), 73 – Provision for reservation in favour of Backward classes – Need not necessarily be made by Parliament/Legislature – can also be made by executive wing of Union/State. [Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)] (PB Sawant, Kuldip Singh and RM Sahai, JJ concurring)**

(G) **Constitution of India, Arts 16(4), 73 – Reservation of appointments/posts for Backward classes – Can be made by executive order – the order is effective and enforceable the moment it is made – Enactment into law or incorporation in rule not necessary for making enforceable.**

Reservation – executive order providing for – Effective from moment it is made.

Executive power – Order providing for reservation in appointments – Effective from moment it is made.

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)]

(H) **Constitution of India, Arts 16(1) and (4) – Clause (4) of Art 16 – not an exception to Clause (1) of Art 16 – Cl. (4) is an instance of classification implicit in and permitted by Cl. (1).**

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)] (S Ratnavel Pandian and PB Sawant, JJ. Concurring)

(I) **Constitution of India, Art 16(4) – Reservation for backward classes – Words “any provision for the reservation of appointments and posts” – Do not contemplate reservation as one and only form of provision – All supplemental and ancillary provisions as also lesser types of special provisions such as exemptions, concessions and relaxations fall within sweep of Art 16(4).**

Reservation – Exemptions, Concessions and relaxations – Fall within sweep of Art 16(4).

Backward classes – Appointments – Exemptions, Concessions and relaxations – Permissible under Art. 16(4).

Appointment – Exception, concession and relaxations to backward classes – Permissible under Art 16(4).

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.) (PB Sawant, J.- Concurring)

- (J) Constitution of India, Art 16(1), (4) – Reservation – Cl. (4) of Art 16 is not exhaustive of concept of reservation – It is exhaustive only of reservations in favour of backward classes – Reservations can be provided under Cl. (1) of Art. 16 – But only in very exceptional situations.**

Majority view (S. Ratnavel Pandian and PB Sawant, JJ concurring) (Kuldip Singh and RM Sahai, JJ contra)

- (K) Interpretation of Statutes – Words used in Constitution – External aids – Constituent Assembly debates – not conclusive of the meaning of the words – Debates only furnish the context in which and objective to achieve which the words have been used.**

[BP Jeevan Reddy, J (for himself and on behalf of MH Kania, C.J. and MN Venkatachaliah, AM Ahmadi JJ.)

(Para 78)

- (L) Constitution of India, Art 16(4) – “Backward class” – Word ‘class’ is used in sense of social class – class not antithetical to caste –Caste can be taken as a backward class of community.**

Words and Phrases – Word ‘class’ – used in Art. 16(4) in social sense.

Words and phrases – ‘community’ – wider than caste.

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)] (Kuldip Singh, J contra)

- (M) Constitution of India, Arts 16(4), (2) – Backward classes – Identification – Caste can be a consideration – Consideration of caste while identifying backward classes does not offend Art. 16(2) – Test to be applied for identification of backward classes need not also be one or uniform.**

Majority view—(per BP Jeevan Reddy J.) (S. Ratnavel Pandian and PB Sawant, JJ concurring) (Dr. TK Thommen, Kuldip Singh, R. M. Sahai, JJ Contra)

- (N) **Constitution of India, Art 16(4) – Backward Classes – Identification – Theory of lingering effects of past discrimination – has no relevance in India where caste discrimination is still prevalent – Identification as backward classes of only that group or section of people, who are suffering the lingering effects of past discrimination would not therefore be proper.-**

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.) (S. Ratnavel Pandian, J. Concurring)

Reservation – Identification of backward classes –Theory of lingering effects of past discrimination – Not applicable in India.

(Paras 84, 285)

- (O) **Constitution of India, Art 16(4) – Backward Classes – Identification – Backwardness contemplated by Art. 16(4) is mainly social backwardness – And not social and educational backwardness – Backward class contemplated by Art. 16(4) is wider than one contemplated under Art. 15(4).**

AIR 1973 SC 930, AIR 1963 SC 649 and AIR 1985 SC 1495, overruled.

Majority view (Per BP Jeevan Reddy, J) (S. Ratnavel Pandian, Kuldip Singh and PB Sawant , JJ concurring) (RM Sahai, J contra)

- (P) **Constitution of India , Art. 16(4) – Reservation for backward class – Creamy layer – Can be and must be excluded – Exclusion makes the class a truly backward class – Would benefit the truly backward – Directions issued to Central Government to specify the basis of exclusion – Whether on the basis of income, extent of holding or otherwise – Of ‘creamy layer’ within four months. Reservation – Exclusion of creamy layer – Validity.**

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.) (PB Sawant, J.- Concurring)

- (Q) **Constitution of India, Art. 16(4) – Reservation in State Services – Identification of backward classes – Backwardness similar to that of Scheduled Castes, Scheduled tribes – Not and cannot be a standard for identification of other classes or groups as backward classes.**

Observations in AIR 1963 SC 649, Overruled.

Majority view (PB Sawant, J. Concurring) (Dr. TK Thommen, J. contra)

- (R) Constitution of India, Art. 16(4) – Backward classes – Identification – Method to be adopted.**

[Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.)]

Neither the Constitution nor the law prescribe the procedure or method of identification of backward classes. Nor is it possible or advisable for the Court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it.

[Paras 88A, 121(3)(b)]

- (S) Constitution of India, Arts 16(4), 32, 226 – Backward class – Inadequate representation in services under State – Satisfaction of State as to – Open to judicial scrutiny. [Per BP Jeevan Reddy, J. (for himself and on behalf of MH Kania, C. J., and M. N. Venkatachaliah, AM Ahmadi, JJ.) [Para 89, 121(3) (f)]**

- (T) Constitution of India, Arts. 16(4), 46 – Backward classes – Identification – Cannot be done exclusively on basis of economic criterion.**

Reservation – Economic criterion – Cannot alone be basis.

Majority view (Per BP Jeevan Reddy, J.) (Kuldip Singh, J contra)

- (U) Constitution of India, Art. 16(4) – Reservation – Backward classes – Identification - can be on occupation-cum-income basis without reference to caste.**

AIR 1964 SC 1823, Followed/Approved – Per BP Jeevan Reddy, J)

[Paras 91, 121 (4) (b)]

- (V) Constitution of India, Arts. 16(4), 14 – Backward classes – Further classification into backward and more backward – Not impermissible in law. (Per BP Jeevan Reddy, J.) (PB Sawant, J. concurring) [Paras 92A, 121(5) 455]**

- (W) Constitution of India, Arts. 16(4), 311 – Services under State – Reservation under Art 16(4) – Should not exceed 50% - Relaxation of 50% rule only in extraordinary situation.**

Civil Services – Reservation for backward classes – Not to exceed 50%.

Backward classes – Reservation in State service – Not to exceed 50%.

Reservation – 50% is the limit.

**Majority view (Dr. TK Thommen & Kuldip Singh, JJ, Concurring)
(S. Ratnavel Pandian J. contra)**

- (X) Constitution of India, Art. 16(4) – Reservations under Art 16(4) – Do not operate as communal reservation – Scheduled Caste member getting selected in open competition field on the basis of his merit – such selection should not be counted against quota reserved for S. C.**

Reservation – Reserved quota – Operation – Manner of. (Per BP Jeevan Reddy, J.)

(Para 94A)

- (Y) Constitution of India, Art. 16(4) – Reservation in favour of backward classes – Limit of 50% - Working out of – Interlocking reservations to be excluded.**

Reservation – Reserved quota – Working of.

Per BP Jeevan Reddy, J.—There are two types of reservations, ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservation in favour of physically handicapped [under clause (i) of Art 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – What is called interlocking reservations. Suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains – and should remain – the same

(Para 95)

- (Z) Constitution of India, Arts. 16(4), 311 – Reservation for backward classes – Limit of 50% - not applicable to exemptions, concessions or relaxations given to backward classes under Art 16(4) – Per BP Jeevan Reddy, J.**

Reservation – Limit of 50% - does not apply to exemption, concession etc.

(Para 95)

- (ZA) Constitution of India, Arts. 16(4), 311 – reservation in service – Rule of 50% limit - To be applied by taking a year as the unit - Applying 50% rule to entire strength of the Cadre/Service would not be consistent with Art. 16. Per BP Jeevan Reddy, J.**

AIR 1976 SC 490, Overruled.

[Paras 96, 121 (b) (c)]

- (ZB) Constitution of India, Arts 16, 311 – Reservation in State service – carry forward of unfilled reserved vacancies – Rule as to, not per se unconstitutional – However operation of such rule should not result in breach of 50% rule.**

AIR 1964 SC 179, overruled

Per BP Jeevan Reddy, J

[Paras 98, 99, 121(b)(d)]

- (ZC) Constitution of India, Arts. 32, 226 – Constitutional question – not to be decided in vacuum – Exception – Matter referred to larger Bench to authoritatively settle law relating to reservations in state services – Question whether reservation can be provided even in promotion – Answered, though did not arise in the case.**

Per BP Jeevan Reddy, JJ. – (Ahmadi, J not expressing any opinion)

(Para 101)

- (ZD) Constitution of India, Arts 16(4), 311, 335 – Reservation for backward classes – Not permissible in promotion - State can extend concessions and relaxations to members of reserved categories in matter of promotion – but could not prescribe lower qualifying marks or lesser level of evaluation for reserved categories.**

AIR 1962 SC 36, Overruled.

Majority view (S. Ratnavel Pandian, TK Thommen, RM Sahai, JJ concurring) (Ahmadi, J. Not expressing any opinion.)

Article 16(4) does not contemplate or permit reservations in promotion as well. It is true that the expression “appointment” takes in appointment by direct recruitment, appointment by promotion and appointment by transfer. It may also be that Article 16(4) contemplates not merely quantitative but also qualitative support of backward class of citizens, but this question has not to be answered on a reading of Article 16(4) alone but on a combined reading of Article 16(4) and Article 335.

AIR 1962 SC 36 overruled.

Reservation of appointments or posts theoretically and conceivable means some impairment of efficiency. There can be no justification to multiply 'the risk' by holding that reservation can be provided even in the matter of promotion. While it is certainly just to say that a handicap should be given to backward class of citizens at the stage of initial appointment, it would be a serious and unacceptable inroad into the rule of equality of opportunity to say that such a handicap should be provided at every stage of promotion throughout their career. That would mean creation of a permanent separate category apart from the main stream – a vertical division of the administrative apparatus. The members of reserved categories need not have to compete with others but only among themselves. There would be no will to work, compete and excel among them. Whether they work or not, they tend to think, their promotion is assured. This in turn is bound to generate a feeling of despondence and 'heart-burning' among open competition members. At the initial stage of recruitment reservation can be made in favour of backward class of citizens but once they enter the service, efficiency of administration demands that these members too compete with others and earn promotion like all others; no further distinction can be made thereafter with reference to their "birth-mark". It is wrong to think.

Denying reservation in matter of promotion does not have the effect of confining the backward class of citizens to the lowest cadres. It is well-known that direct recruitment takes place at several higher levels of administration and not merely at the level of Class IV and class III.

(Para 107)

It would be permissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration.

(Para 107)

The Court being conscious of the fact that this (no reservation in promotion) being departure from settled law – Settled law for more than 30 years – Directed that its decision on this aspect of reservation shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It was further directed that wherever reservations are already provided in the matter of promotion – be it Central Services or State Services, or for that matter services under any corporation, authority or body falling under the definition of 'State' in Article 12 – such reservations shall continue in operation for a period of five years from the date of judgment.

(Para 107)

(ZE) Constitution of India, Art. 16(4) – Reservation for backward classes – Not anti-meritian –Per BP Jeevan Reddy, J.

Efficiency, competence and merit are not synonymous concepts; may be, it is wrong to treat merit as synonymous with efficiency in administration and that merit is but a component of the efficiency of an administrator. Even so, the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. But this much cost has to be paid, if the constitutional promise of social justice is to be redeemed. Given an opportunity, members of these classes are bound to overcome their initial disadvantages and with compete with – and may, in some cases, excel – members of open competitor candidates. It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are anti meritian. Merit there is even among the reserved candidates and the small difference, that may be allowed, at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency along with others.

[Para 111, 121 (f)]

(ZF) Constitution of India, Arts. 311, 16(4), 335 – Reservation for backward classes – Has to be consistent with requirements of efficiency of administration – in matter of appointment Government cannot say that there shall be no minimum qualifying marks for Scheduled Castes/Scheduled Tribes candidates, while prescribing a minimum for others – Per BP Jeevan Reddy, J.

(Para 111)

(ZG) Constitution of India, Art. 16(4) – Reservation for backward classes – Should not be made in services and positions where merit alone counts. Majority view (S. Ratnavel Pandian, J. concurring).

There are certain services and positions where either on account of nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit alone counts. In such situations, it may not be advisable to provide for reservations. Some of the services and posts to whom application of the rule of reservation may not be advisable are: (1) Defence Services including all technical posts therein but excluding civil posts. (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defence equipment. (3) Teaching posts of Professors—and above, if any. (4) Posts in super-specialities in Medicine, Engineering and other scientific and technical subjects. (5) posts of pilots (and co-pilots) in Indian Airlines and Air India . The list given above is merely illustrative and not exhaustive.

[Paras 112, 121(f), 366]

(ZH) Constitution of India, Arts. 32, 226, 16(4) – Reservations in State Services – Matters relating to identification of backward classes and reservation for such classes – Judicial scrutiny – No special or particular standards of scrutiny apply – Court however would normally extend due deference to the judgment and discretion of the Executive – a co-equal wing – in these matters.

Per BP Jeevan Reddy, J (for himself and on behalf of MH Kania and MN Venkatachaliah, AM Ahmadi, JJ.) There is no particular or special standard of judicial scrutiny in matters arising under Art 16(4) or for that matter under Art 15(4). The Court would normally extend due difference to the judgment and discretion of the Executive – a co-equal wing in the matter.

[Paras 113, 121(12), 300]

Per S. Ratnavel Pandian, J.—

The action of the Government in making provision for the reservation of appointments or posts in favour of ‘any backward class of citizens’ is a matter of policy of the Government. What is best for the ‘backward class’ and in what manner the policy should be formulated and implemented bearing in mind the object to be achieved by such reservation is a matter for decision exclusively within the province of the Government and such matters do not ordinarily attract the power of judicial review or judicial interference except on the grounds which are well settled by a catena of decisions of Supreme Court. (Para 300)

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(ZI) Constitution of India, Art. 16(4) – Office Memorandum D/- 25-9-1991 Cl.1 – Reservation for backward classes – Clause (1) of office memorandum classifying backward class into backward classes and poorer sections of backward classes and giving preference to poorer sections – Not unconstitutional – Words ‘poorer sections’ mean not economically poorer but those who are socially and economically more backward – Word ‘preference’ would mean equitable apportionment of vacancies amongst the two sub-categories

Majority view (PB Sawant, J. Concurring) (S Ratnavel Pandian, J. contra).—

The expression ‘poorer sections’ mentioned in Para 2(i) of the amended Office Memorandum of 1991 issued by the Govt. on basis of recommendations of Mandal Commission denotes a division among SEBCs on economic criterion. Therefore, no division or sub-classification as ‘poorer sections’ and other backward class (non poorer sections) out of the identified SEBCs can be made by application of ‘means test’ based on economic criterion. Such a division in the same identified and ascertained unit consisting of SEBCs having common characteristics and attributes, the primary characteristic or attribute being the social backwardness is violative of clause (4) of Article 16 of the

Constitution. Hence, the division of the SEBCs as 'poorer sections' and others, brought out in para 2(i) of the impugned amended Office Memorandum dated 25th September, 1991 is constitutionally invalid and impermissible. (Paras 335, 366)

On first impression, it may appear that backward classes are classified into two sub-groups on the basis of economic criteria alone and a preference provided in favour of the poorer sections) of the backward classes. However, such an interpretation would not be consistent with the context in which the said expression is used and the spirit underlying the clause nor would it further the objective it seeks to achieve. The object of the clause is to provide a preference in favour of more backward among the "socially and educationally backward classes". In other words, the expression 'poorer sections' was meant to refer to those who are socially and economically more backward. The use of the word 'poorer', in the context, is meant only as a measure of social backwardness. Understood in this sense, the said classification is not and cannot be termed as invalid either constitutionally speaking or in law. Having regard to the fact the backward classes are sought to be divided into two sub-categories, viz., backward and more backward, the expression 'preference' must be read down to mean an equitable apportionment of the vacancies reserved (for backward classes) among them. [Paras 114, 121(9),455]

(ZJ) Constitution of India, Arts. 16(1), 311 – Office Memorandum dt. 25.09.91. Cl.(ii) – Reservation in favour of economically backward sections among open competition category – Not permissible under Art. 16(1) – Reservation of 10% seats for such category made under Cl. (ii) of office memorandum liable to be quashed.

Majority view (S. Ratnavel Pandian and T.K. Thommen, JJ. (Concurring) (Kuldip Singh, J. Contra).

Reservation of 10% of the vacancies among open competition candidates on the basis of income/property holding means exclusion of those above the demarcating line from those 10% seats. It may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or property-holding. Since the employment under the State is really conceived to serve the people no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Art. 16. On this ground alone, the clause making such reservation in the Office Memorandum dated 25-5-1991 fails. [Paras 115, 121(11), 366, 553, 622, 623]

(ZK) Constitution of India, Arts. 15(4), 16(4) – Scope – Article 15(4) not confined to programmes of positive action alone – Article 16(4) cannot also be compartmentalised as a provision warranting programmes of positive discrimination (Per B. P. J.Reddy, J.) (Para 116)

(ZL) Constitution of India, Arts 16(4), 340 – Backward classes – Identification – Permanent body to examine complaints of wrong inclusion or non-inclusion of groups in list of backward classes – Can be constituted under Art. 16(4) or under Article 16(4) read with Art. 340 – Direction to

constitute such bodies at Central and State levels issued (Majority view) (S. Ratnavel Pandian, J. Concurring)

[Paras 117, 121 (13), 366]

(ZM) Constitution of India, Art. 16(4) – Reservation – Recommendations of Mandal Commission Report – Not invalid on ground that they are based on 1931 census. (Per S. Ratnavel Pandian, J.)

(Paras 263, 264)

(ZN) Constitution of India, Arts. 16(4), 14 – Scope – Reservation for socially, educationally backward classes – Recommendations of Mandal Commission Report – Implementation of – Would not result in demoralisation and discontent – it would not curtail concept of equality enshrined under Art 14 or destroy basic structure of Constitution. (Per S. Ratnavel Pandian, J.)

(Paras 267, 268, 272)

(ZO) Constitution of India, Art 16(4) – Reservation – Power conferred on State under Art. 16(4) is one coupled with duty – Therefore, State has to exercise that power for the benefit of all those, namely, backward class for whom it is intended. (Per S. Ratnavel Pandian, J.)

(Para 366)

(ZP) Constitution of India, Art. 16(4) – Reservation in State employment – Interpretation of constitutional provisions relating to – Should be done by treating Constitution as vibrant document alive to social situation.

Interpretation of statutes – Constitutional provisions (Per P. B. Sawant, J.)

(Para 370)

(ZQ) Constitution of India, Art 16(4) – Reservation for backward classes – Reservation will have to be estimated with reference to representation in different grades and category. (Per P. B. Sawant, J.)

(Para 448)

(ZR) Constitution of India, Art. 16(4) - Backward class – Classification of each of them internally into backward and more backward – Not justified (Per P. B. Sawant, J.)

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(ZS) Constitution of India, Art 16(4) – Interpretation of Article – American Judgment not relevant (Per R. M. Sahai, J.)

Interpretation of Statutes – Constitutional provision – Aid of American decision.

(Para 633)

(ZT) Constitution of India, Art 16(4) – Reservation – no period for, is provided – Every State, however, must keep on evaluating periodically if it was necessary to continue reservation and to whom (Per R. M. Sahai, J.)

Reservation – For how many years.

(Para 633)

- (ii) **Ajit Singh and others, Appellants v. The State of Punjab and others, Respondents in the matter of seniority of roster point promotees vis-avis general promotees (Reported in AIR 1999 SC 3471)**

[IA nos. 1-3 in Civil Appeal Nos. 3792-94 of 1989.]

The matter was heard by 5-Member Bench consisting of Dr. A. S. ANAND, C. J., K. VENKATASWAMI, G. B. PATTANAIK, S. P. KURDUKAR, M. JAGANNADHA RAO, JJ.

Date of judgment: 16-09-1999

Summary of salient points of the judgment:

- (A) **Constitution of India , Pre., Part 3 – Constitutional provisions – Fundamental rights of particulars – Interpretations – Concept that Constitution is not static has to be kept in mind.**

Interpretation of statutes – Constitutional provisions

(Paras 19, 20)

- (B) **Constitution of India, Art. 16(1) – Promotion – Rights to be considered for – Is fundamental right – Word employment in Art. 16(1) – Is wider and takes in its sweep aspect of promotion.**

Ashok Kumar Gupta v. State of U. P., (1997) 5 SCC 201 and Jagdish Lal v. State of Haryana 1997 AIR SCW 2257 : AIR 1997 SC 2366 : 1997 Lab IC 2301, Overruled.

(Paras 22, 27)

- (C) **Constitution of India, Art 16(1) –Promotion – Right to be considered for and seniority attached to such promotion – Are important facets of right guaranteed by Art. 16(1).**

(Para 23)

- (D) **Constitution of India, Art. 16(4), (4A) – Reservation in appointment and in promotion – Not a fundamental right.**

Ashok Kumar Gupta v. State of U. P., (1997) 5 SCC 201 and Jagdish Lal v State of Haryana 1997 AIR SCW 2257 : AIR 1997 SC 2366 : 1997 Lab IC 2301, Overruled

Art. 16(4) and Art. 16(4A) do not guarantee any fundamental right to reservation. Both these Articles open with a non-obstante clause—“Nothing in this Article shall prevent the State from making any provision for reservation.....” . There is a marked difference in the language employed in

Art. 16(1) on the one hand and Art. 16(4) and Art. 16(4A). There is no directive or command in Art 16(4) or Art. 16 (4A) as in Art. 16(1). On the face of it, the above language in each of Arts. 16(4) and 16(4A), is in the nature of an enabling provision. It is thus clear that Arts. 16(4) and 16(4A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provision vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those Articles so warranted.

Ashok Kumar Gupta v. State of U. P. (1997) 5 SCC 201 and Jagdish Lal v. State of Haryana 1997 AIR SCW 2257: AIR 1997 SCC 2366 : 1997 Lab IC 2301, Overruled.

(Paras 28,31)

- (E) Constitution of India, Arts. 16(4), (4A), 226 – Reservation – Art. 16(4) and (4A) does not create ant constitutional duty – Mandamus cannot therefore be issued to provide for reservation or for relaxation.**

Comptroller and Auditor General of India, Gain Prakash v. K. S. Jagannathan, AIR 1987 SC 537 : 1987 Lab IC 262 and Superintending Engineer, Public Health v. Kuldeep Singh, 1997 AIR SCW 1985 : AIR 1997 SC 2133 : 1997 Lab IC 2097, Held Per incuriam.

(Para 32)

- (F) Constitution of India, Arts 16(1), (4), (4A), 335 – Employment – Equality of opportunity – And affirmative action (reservation) – Balance has to be struck – Affirmative action should stop where reverse discrimination begins – Care also has to be taken that reservation does not adversely affect efficiency of administration.**

(Paras 36, 37)

- (G) Constitution of India, Art. 16(4) – Reservation – Meaning and effect – Reserved candidate gets appointed without going through normal process of selection applied to general candidate.**

(Para 38)

- (H) Constitution of India, Art. 16(4A) – Roster point reservation – Effect – Roster points do not determine seniority between reserved and general candidates.**

In a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the

reserved candidate if he is at the end of the merit list, gets promotion to level 2 by side-stepping several general candidates. That is the effect of the roster point promotion. The roster points fixed at level 1 are not intended to determine any seniority at level 1 between general candidates and the reserved candidates. The roster point merely becomes operative whenever a vacancy reserved at level 2 becomes available. Once such vacancies are all filled, the roster has worked itself out. Thereafter other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises.

(Paras 39, 40)

- (I) **Constitution of India, Art. 16(1), (4A) – Seniority – Determination – Rule of continuous officiation – Not applicable to roster promotees – General candidate who is senior in feeder category – On promotion becomes senior to roster promotee even though latter is promoted earlier.**

Jagdish Lal v. State of Haryana, 1997 AIR SCW 2257: AIR 1997 SC 2366: 1997 Lab IC 2301, overruled.

The seniority rule relating to “continuous officiation” in promotion is part of the general scheme of recruitment by direct recruitment, promotion etc., on basis of seniority-cum-merit and is based upon a principle of equal opportunity for promotion. It is only to such promotions that the seniority rule of “continuous officiation” is attracted. The promotion rule of seniority-cum-merit is interlinked with seniority rule of continuous officiation. In other words, only in case the officers have reached the promotional level by competition and on consideration of their cases on the basis of seniority-cum-merit, can the seniority Rule relating to continuous officiation be applied. In the case of roster point promotees, the said candidate who get promoted as per the roster, having not been promoted upon consideration of their cases on the basis of seniority-cum-merit they cannot rely upon Rule dealing with seniority from the “date of continuous officiation”. It is not permissible to delink the seniority Rule from the recruitment Rule based on equal opportunity and apply it to promotions made on the basis of the roster which promotions are made outside the equal opportunity principle. The general candidates who are senior at feeder level and who have reached promotional post before the reserved candidate moved to still higher level will have to be treated as senior to the roster promotees in the promotional post and it is on that basis that promotion to still higher level must be made, upon first considering the cases of the senior general candidates.

(Paras 48, 49, 51)

The roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior

general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level.

(Para 76)

Jagdish Lal v. State of Haryana, 1997 AIR SCW 2257 : AIR 1997 SC 2366 : 1997 Lab IC 2301, Overruled.

(Paras 48, 49)

Observation in Ashok Kumar Gupta v. State of U. P. (1997) 5 SCC 201 which run contrary to Indra Sawhney v. Union of India, 1992 AIR SCW 3682 : AIR 1993 SC 477 : 1993 Lab IC 129 and RK Sabharwal v. State of Punjab, 1995 AIR SCW 1371 : AIR 1995 SC 1371 : 1995 Lab IC 1618 do not lay down correct law.

(Para 58)

Union of India v. Virpal Singh, 1995 AIR SCW 4309 : AIR 1996 SC 448 and Ajit Singh Januja v. State of Punjab, 1996 AIR SCW 1996 : AIR 1996 SC 1189 : 1996 Lab IC 1030, Approved.

(Paras 62, 65)

It would not be correct to say that since Indira Sawhney v. Union of India 1992 AIR SCW 3682 : AIR 1993 SC 477 : 1993 Lab IC 129 permitted reservations in promotion for a further period of 5 years and that during that period Art 16(4A) was incorporated in Part III of the Constitution the concept of seniority attached to the roster promotion, as per certain rulings then in force, must be deemed to continue and deemed to be permissible in view of Art. 16(4A). Indira Sawhney v. Union of India, 1992 AIR SCW 3682 : AIR 1993 SC 477 : 1993 Lab IC 129 did not have to go into issues relating to seniority and on the other hand it referred to the principle of balancing Art. 16(4) against the rights of the individual under Art. 16(1). It is, therefore, not possible to accept that the 5 years rule and Art. 16(4A) would keep out the applicability of Art. 16(1) to test the validity of any circular, order or rule which conferred seniority to the roster point promotees:

(Para 66)

Mervyn Coutinho v. Collector of Customs, AIR 1967 SC 52 and State of Punjab v. Hiralal AIR 1971 SC 1777, Disting.

(Para 71)

Karam Chand v. Haryana State Electricity Board, AIR 1989 SC 261: 1989 Lab IC 1263: (1996) 1 Scale 752 and Kailash Chand Joshi v. Rajasthan High Court, observations to contrary overruled.

(Para 71)

(J) Constitution of India, Arts. 16(1), 16(4A) – Promotion – General candidate and roster candidate – Balancing of their rights – Catch up rule that should be applied.

A reasonable balancing of the rights of General candidate and roster candidate would be achieved by the following catch up rule in case any senior general candidate at the Level 2 reaches Level 3 before the reserved candidate (roster point promotee) at Level 3 goes further up to Level 4 in that case the seniority at Level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at Level 2. Further promotion to Level 4 must be on the basis of such a modified seniority at Level 3, namely, that the senior general candidate of Level 2 will remain senior also at Level 3 to the reserved candidate, even if the latter had reached Level 3 earlier and remained there when the senior general candidate reached that Level 3. In cases where the reserved candidate has gone up to Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed (when the senior general candidate is promoted to Level 4) on the basis of when the time of reserved candidate for promotion to level 4 would have come, if the case of the senior general candidate was considered at Level 3 in due time. Such a procedure will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Art. 16(1) to the general candidates.

(Para 80)

(K) Constitution of India, Art. 16 – Reserved candidates – Promoted in excess of quota by wrong re-operation of roster points – Decision in RK Sabharwal v. State of Punjab, 1995 AIR SCW 1371: AIR 1995 SC 1371: 1995 Lab IC 1618 protecting them from reversion by making decision to operate prospectively – Such excess promotees cannot claim additional benefit of seniority in promotional post.

Before RK Sabharwal v. State of Punjab, 1995 AIR SCW 1371: AIR 1995 SC 1371 : 1995 Lab IC 1618 was decided on 10-2-1995, it appears that, in several services, the roster was initially put in operation and promotions at all the roster points were filled up. But the roster was once again operated on future vacancies, even though all the required reserved candidates were in position at the promotional level. It was not realised that once the roster points were all filled, the roster had served its purpose of fresh members of the reserved classes could claim promotional posts only if any promotional post already filled by the reserved candidates fell vacant. This misapplication of the roster came to be removed for the first time on 10-2-1995 when RK Sabharwal v. State of Punjab, 1995 AIR SCW 1371 : AIR 1995 SC 1371 : 1995 Lab IC 1618 was decided. Obviously, by that time several reserved candidates had got promotion in excess of their quota because of the wrong “re-operation” of the roster points. If the law declared in RK Sabharwal v. State of Punjab, 1995 AIR SCW 1371 : AIR 1995 SC 1371 : 1995 Lab IC 1618 were to be treated as retroactive as is the normal position whenever the law is declared by the Supreme Court, it would have resulted in reversions of several officers of the

reserved classes as their promotions before 10-2-1995 by the fresh operation of the roster was wholly unjustified. The Supreme Court in *RK Sabharwal v. State of Punjab*, 1995 AIR SCW 1371 : AIR 1995 SC 1371 : 1995 Lab IC 1618 therefore gave prospective operation to its judgment. These excess promotees whose reversion was protected cannot further claim the additional benefit of the seniority in the promotional post even if such promotion made before 10-2-1995 was wrong in view of what was decided in *RK Sabharwal v. State of Punjab*, 1995 AIR SCW 1371 : AIR 1995 SC 1371 : 1995 Lab IC 1618. While Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which has no element of immediate hardship. Thus, while promotions in excess of roster made before 10-2-1995 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10-2-1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate.

(Paras 86, 87, 88)

- (L) Constitution of India, Art. 16(4A) – Seniority – Reserved candidate promoted without considering senior general candidate who reached feeder category latter – Promotion of such reserved candidate to be reviewed after 1-3-1996 i. e. decision in *Ajit Singh Januja V. State of Punjab*, 1996 AIR SCW 1196 : AIR 1996 SC 1189 : 1996 Lab IC 1030 – seniority vis-à-vis reserved and general promotees to be adjusted**

Where, before 1-3-96, i. e. the date of *Ajit Singh's* judgment *Januja v. State of Punjab*, 1996 AIR SCW 1996 : AIR 1996 SC 1189 : 1996 Lab IC 1030, at the level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached there later, (but before the reserved candidate was promoted to level 4) and when in spite of the fact that the senior general candidate had to be treated as senior at level 3 (in view of *Ajit Singh Januja v. State of Punjab*, 1996 AIR SCW 1196 : AIR 1996 SC 1189 : 1996 Lab IC 1030, the reserved candidate is further promoted to level 4 – without considering the fact that the senior general candidate was also available at level 3 – then, after 1-3-96, it becomes necessary to review the promotion of the reserved candidate to level 4 and reconsider the same (without causing reversion to the reserved candidate who reached level 4 before 1-3-96). As and when the senior general candidate is later promoted to level 4, the seniority at the level 4 has also to be refixed on the basis of when the reserved candidate at level 3 would have got his normal promotion, treating him as junior to the senior general candidate at level 3.

(Para 91)

- (iii) **Post-Graduate Institute of Medical Education & Research, Chandigarh & Ors. Appellant v. Faculty Association and Others WITH Appellant SS Kalsi v Respondent ML Sehgal & Ors WITH Appellant: State of Punjab and another v. Respondents : ML Sehgal & Ors WITH Petitioners: Union of India and others v Respondents: K. Sivan and another WITH Petitioners : State of Punjab, etc. v. Respondents Harcharan Singh and ors. and Petitioners : State of Punjab AND others v. Respondents: Shangara Singh and others. (Reported in 1998 AIR SCW 1553)**

(Review Petn. (C) No. 1749 of 1997 in Civil Appeal No. 3175 of 1997 with CA Nos. 2346, 2345 of 1981 with Special Leave Petn. (Civil) Nos. 13148 of 1997, 2892 of 1983 and 9252 of 1981)

Matter was heard by S. C. AGRAWAL, G. N. RAY, Dr. A. S. ANAND, S. P. BARUCHA, AND S. RAJENDRA BABU, JJ.

Date of judgment : 17-04-1998.

- (A) Constitution of India, Arts. 15(4), 16(4) – Single post – Cannot be reserved – Neither directly nor by device of rotation of roster points.**

1995 Supp (1) SCC 432, 1997 AIR SCW 2426, 1997 AIR SCW 3113 and 1997 AIR SCW 1937, Overruled.

1997 AIR SCW 2274, Reversed.

There cannot be any reservation in a single post cadre either directly or by device of rotation of roster point.

1995 Supp (1) SCC 432, 1997 AIR SCW 2426, 1997 AIR SCW 3113 and 1997 AIR SCW 1937, Overruled.

1997 AIR SCW 2274, Reversed.

(Para 38)

In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional frame-work. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such

post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society

(Paras 35, 36)

There is no difficulty in appreciating that there is need for reservation for the members of the Scheduled Castes and the Scheduled Tribes and other backward classes and such reservation is not confined to the initial appointment in a cadre but also to the appointment in promotional post. It cannot, however, be lost sight of that in the anxiety for such reservation for the backward classes, a situation should not be brought by which the chance of appointment is completely taken away so far as the members of other segments of the society are concerned by making such single post cent per cent reserved for the reserved categories to the exclusion of other members of the community even when such members is senior in service and is otherwise more meritorious. Arts. 14, 15 and 16 including Arts. 16(4), 16(4A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to the reserved classes. It is to be appreciated that Art. 15(4) is an enabling provision like Art. 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of citizens. The special provision under Art. 15(4) must, therefore, strike a balance between the several relevant considerations and proceed objectively. The doctrine of equality of opportunity in Cl. (1) of Art. 16 is to be reconciled in favour of backward classes under Cl. (4) of Art. 16 in such a manner that the latter while serving the cause of backward classes shall not unreasonably encroach upon the field of equality.

(Paras 32, 33)

(B) Constitution of India, Art. 16(4A) – Scope – Art. 16(4A) deals with reservation in promotional post – Does not deal with question of reservation in a single cadre post.

(Para 31)

In concluding part of the judgment in the matter, Hon'ble Court decides as follows:

“38. We, therefore, approve the view taken in *Chakradhar's case* that there cannot be any reservation in a single post cadre and we do not approve the reasonings in *Madhav's (1997 AIR SCW 3113)*, *Brijlal Thakur's* and *Bageswari Prasad's case (1995 Supp SCC 432)* upholding reservation in a single post

cadre either directly or by device of rotation of roster point. Accordingly impugned decision in the case of Graduate Institute of Medical Education & Research cannot also be sustained. Review Petition made in Civil Appeal No. 3175 of 1997 in case of Post-Graduate Institute of Medical Education and Research, Chandigarh, is therefore allowed. Judgment dated May 2, 1997 passed in Appeal No. 3175 of 1997 is set aside.”

(iv) Pankaj Kumar Saha, Petitioner v. the Sub-divisional Officer, Islampur and Others, Respondents. (Reported in AIR 1996 SUPREME COURT 1728)

Special Leave Petn. (C) No. 4680 of 1996, (CC No. 113 of 1996)

Matter was heard by *K. RAMASWAMY AND G. B. PATTANAIK, JJ.*

Date of judgment: 12-02-1996

Constitution of India, Art. 341 – Caste certificate – Issuance of – Sunri (excluding Saha) Caste notified as Scheduled Caste by President – Finding of fact that for over a century the petitioner’s family found to be Saha by caste - Scheduled Caste certificate issued to petitioner – Is unconstitutional.

(Para 6)

**Cases referred : Chronological Paras 1996 AIR SCW 382 : (1996) 2 JT (SC) 117
5**

ORDER :--This Special Leave Petition is filed against the order of the Calcutta High Court dated April 25, 1994, made in Original Order T. No. 2878/92.

2. Petitioner’s brother Amal Kumar Saha was granted a Scheduled Caste certificate on January 15, 1982, and the Petitioner was granted a certificate on January 22, 1982. The certificate granted to the elder brother was cancelled on December 20, 1986. Said elder brother approached the High Court by way of writ application under Article 226 of the Constitution which was registered as C. O. No. 7629 of 1988. The said writ application was disposed of directing petitioner’s brother to file a representation. Even the representation of the brother was rejected by order dated December 18, 1991. The petitioner was served with a notice dated January 6, 1992 calling upon him to show cause as to why the certificate granted to him would not be cancelled. The petitioner appeared before the authority and filed his show cause. Finally, by order dated July 9, 1992, the certificate was cancelled. The petitioner’s elder brother challenged the order of cancellation of his certificate by

filing a writ petition, which is still pending. But the petitioner's writ petition challenging the order of cancellation was dismissed by the learned single Judge on August 27, 1992, and the Division Bench dismissed the appeal in limine on April 25, 1994. Hence the special leave petition.

3. When the matter had come up on the last occasion, we directed the learned counsel to produce the Presidential notification published under Art 341(1) of the Constitution which has been made part of the record. It discloses that as regards the State of West Bengal, item No. 57 Sunri (excluding Saha) has been declared to be Scheduled Caste. Admittedly the name of the petitioner has been described as Saha. He claimed the status as Sunri, a Scheduled Caste.

4. Article 336(24) defines "Scheduled Castes" to mean such caste, races or tribe or part of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution. Article 341(1) provides that the President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes, or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

5. It is seen that in exercise of the said power, the President had issued the public notification which is called Scheduled Castes and Scheduled Tribes Order, 1950, and has been amended in 1976, after the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 was made. As indicated earlier, Sunri (excluding Saha) is a Scheduled caste for purpose of State of West Bengal. The petitioner admittedly bears the name of Saha. The authorities found as a fact that for over a century the petitioner's family are Saha by caste. The President after consultation with the Governor, has excluded Saha, a liquor business community, as Scheduled Caste. Though some Scheduled Castes by name Sunri adopted tapping as profession, they suffer from untouchability while Sahas, liquor business community like Sethi balija, Edigal, or Gowda in Andhra Pradesh, are not Scheduled Castes. In the notice given to the petitioner details were given and the record produced before the authorities were considered by the competent authority which held that Sahas are not the Scheduled Castes and that, therefore, they cannot be considered to be Sunris. In a recent judgment in *Nityananda Sharma v. State of Bihar*, (1996) 2. JT (SC) 117 : (1996 AIR SCW 782), a Bench of three Judges had examined the scope of judicial review and power of the Court to go into the question of synonyms of the caste.

6. It is now settled law that though evidence may be admissible to the limited extent of finding out whether a caste which claims the status as Scheduled Caste or Tribe was in fact included in the Presidential notification as amended under 1976 Act, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be a Scheduled caste or Scheduled Tribe. The Courts would

look into the notification issued by the President to see whether the name finds place in the notification. Saha caste is expressly excluded from Sunri, a Scheduled Caste notified in the notification issued by the President in relation to the State of West Bengal which is conclusive. The certificate issued to the petitioner is, therefore, clearly unconstitutional and a fraud on the Constitution. The petitioner cannot be considered to be a Scheduled Caste.

7. Accordingly the Special Leave Petition is dismissed.

- (v) **Bangiya Saha Samity & Another, Petitioner v. Union of India & Ors, Respondents(s)**
[SUPREME COURT W. P. (C) D14159/97 (for prel. Hearing)]

Heard by Hon'ble Mr. Justice G. N. RAY. & Hon'ble Mr. Justice G. B. PATTANAİK.

Date of order: 8-12-1997

Upon hearing Counsel the Court made following :

ORDER

We are not inclined to entertain this petition under Art. 32 of the Constitution . It is accordingly dismissed.

- (vi) **Bangiya Saha Samity & Another , Petitioner v. Union of India & Ors, Respondent (s)**
[Supreme Court Writ Petition (C) O. No. 14159/97]

Heard by Hon'ble Mr. Justice G. N. RAY & Hon'ble Mr. Justice G. B. PATTANAİK.

Date of Order : 12-12-1997

Upon hearing the Counsel the Court made the following

ORDER

It appears to us that petition under Art. 32 of the Constitution was disposed of by this Court on 8th December, 1997 in view of the decision rendered by this Court in Pankaj Kumar Saha V. Sub-divisional Officer, Islampur and Ors, reported in 1996

(8) SCC 264. Unfortunately in the order drawn up, the reason was not properly indicated. The order dated 8th December 1997 will therefore stand modified by indicating that “it appears to us that judgment of this Court in Special Leave Petition (C) No. 4680/96 being confined to the facts of that case since reported in 1996 (8) SCC 264, we are not inclined to entertain this petition under Art. 32, and the same stands disposed of.”

(vii) Abhoy Pada Saha, Appellant v. Sudhir Kumar Mandal, Respondent [Reported in AIR 1967 Supreme Court 115 (V 54 C 21)] (From Calcutta AIR 1966 Cal 141)

(Civil Appeals Nos. 931 and 1149 of 1965)

Matter was heard by A. K. SARKAR, C. J., J. R. MUDHOLKAR, R.S. BACHAWAT, J. M. SHELAT AND RAGHUBAR DAYAL, JJ.

Date of judgment : 05-05-1966.

Salient points of judgment:

(A) Constitution of India, Art. 341 – Constitution (Scheduled Castes) Order, 1950, Sch., Part 13, Item 40 – “Sunri excluding Saha” – Meaning – “Saha” in the expression refers to a caste group within the Sunri caste – It is a smaller caste group within the larger Caste group of Sunri – Surname is irrelevant as a test for applying item 40 unless it is shown that it indicated a smaller caste group of Sunris - Appellant contesting and getting elected in the election to West Bengal Legislative Assembly by describing himself as “member of the Sunri caste which is a Scheduled caste” – Election challenged on the ground that appellant was a member of ‘Saha’ caste and not a member of Scheduled caste – Absence of evidence to show that appellant belonged to smaller Caste group of ‘Sahas’ – Held, that appellant must be held to belong to Sunri caste which was a Scheduled caste specified in item 40. AIR 1966 Cal 141 reversed. (Paras 8, 10 and 11)

(B) Civil P. C. (1908), Preamble – Interpretation of Statutes – Exclusion of one thing from another – When a statute says that a thing is to be excluded from another, both things are of the same kind.

(Para 8)

There is no doubt that Sunri is a caste. Nobody disputes that. That also follows from the fact that the Constitution (Scheduled Castes) Order, 1950 was promulgated to indicate those castes who are to be considered as Scheduled Castes for the purpose of the Constitution. “Sunri” in item 40, therefore, refers

to a caste. If Sunri is a caste, the word “Saha” in the expression “excluding Saha” in the item must, without more, also refer to a caste group within the Sunri caste. It is legitimate to think that when a statute says that a thing is to be excluded from another, both things are of the same kind: if one is a caste the other must be a caste. It follows that when the item excluded Sahas from Sunris, since Sunri is a caste group, Saha must equally be another caste group. The Tribunal appears to have taken the same view. Now a thing can be excluded from another only if it was otherwise within it. Therefore, the correct interpretation of the item is that it indicates men of the Sunri caste but not those within that caste who formed the smaller caste group of Sahas. This is where the Tribunal went wrong.

(Para 8)

The Tribunal came to its conclusion that “Saha” in the item referred to a caste distinct from the Sunri caste because the evidence before it did not show that there was within the Sunri caste a smaller caste group called Sahas. The error of the Tribunal lay in interpreting the Order in the light of the evidence before it. There was no justification for doing that. After all, the evidence led in a case may be imperfect. Suppose the evidence in another case led to the conclusion, as it might conceivably do, that there was a smaller caste group within the Sunri caste, called Sahas. In that case, if the reasoning applied by the Tribunal is right, it has to be held that the expression “excluding Saha” meant excluding a smaller caste group called Sahas. A method of interpreting a statutory provision which might lead to such uncertainty cannot be correct. If the correct interpretation of item 40 was, as we think it was, that Sahas were a caste group within the Sunri caste, no question of Sahas being a distinct class independent of Sunris could arise. The finding that Sahas were a wholly independent caste was altogether irrelevant to the point in issue. Evidence cannot alter the natural interpretation of the words in the Order.

For the same reasons, we are unable to agree with the interpretation of the High Court that the Sahas excluded were those Sunris who bore the surname Saha. We think the learned Judges of the High Court also interpreted item 40 in the light of the evidence in the case. If the intention was to exclude from Sunris those members of that caste who bore the surname Saha, the item would have said so.; it would then have read “Sunri excluding those who bore the surname Saha”. In the absence of such words “Saha” must, in the context, be understood as referring to a smaller caste group within the bigger caste group of Sunris. Surname is irrelevant as a test for applying item 40 unless it is shown that it indicated a smaller caste group of Sunris. It is nobody’s case that there is evidence to show that. It is of interest to remind in this connection that the Order provides that the Sunris in the Purulia District and those parts of the Purnea District which had been transferred to West Bengal were not to be considered as belonging to a Scheduled caste. That would show that where the exclusion is by a test other than a caste group, the Order expressly says so. It is natural to think that if the excluded Sahas were those Sunris who bore the surname Saha, the order would have made that clear. In our opinion the learned Judges of the High Court were in error in interpreting the item on the evidence in the case as they appear to have done.

If we are right in our interpretation of item 40, then the only question that has to be decided in this case is, whether the respondent has established that the appellant belonged to a smaller caste group called Sahas within the Sunri Caste. This question presents no difficulty. The respondent called witnesses to establish that the appellant belonged to the smaller caste group of Sahas. These witnesses were disbelieved by the Tribunal which described them as unreliable. P. N. Mookerjee, J said “it has not been proved that the respondent (appellant here) belonged to any separate Saha caste or to any Saha – Sunri sub-caste of the Sunri caste”. Though Basu, J said that the appellant belonged to the Saha group of Sunris, it would appear that he was thinking of that group as consisting of those Sunris who bore the surname Saha. All the courts in West Bengal, therefore, came to the conclusion that it had not been proved in this case that the appellant belonged to the smaller caste group of Sahas. We have no reason to take a different view of the evidence. The result then is, that the appellant is a Sunri by caste and has not been proved to belong to the smaller caste group of Sahas. He must be held to belong to the Scheduled Caste specified in item 40. That being so, the election petition must fail.

(Paras 9, 10,11)