

## FULL BENCH

Before V. Ramaswami, C.J., S. D. Bajaj and G. R. Majithia, JJ.

JASWANT SINGH and another,—Petitioners.

versus

SECRETARY TO GOVERNMENT PUNJAB and others,—  
Respondents.

Civil Writ Petition No. 10952 of 1988.

August 23, 1989.

*Constitution of India, 1950—Arts. 14, 15 and 16—Appointment—Promotion—Reservation for Scheduled Castes/Tribes—Scope of government orders—Scheduled caste candidates can compete with general category candidates for non-reserved seats—Reservation—Whether amounts to maximum number of seats—Roster points are seniority points for Scheduled Castes/Backward Class—Scheduled Caste/Backward Class candidates eligible on merit—Denial of appointment to such candidates—Such denial on the plea that requisite percentage of Scheduled castes already holding the post—Validity of such denial.*

*Held, that while non-scheduled caste candidates are not eligible for appointment or promotion to the reserved posts at the reserved points, the Scheduled Caste candidates are eligible to compete with the general category candidates in respect of the posts which are not reserved and also claim promotion to the same if they are otherwise eligible by virtue of seniority and merit and merely because they happen to be members of the Scheduled Caste, they cannot be deprived of their right to compete for appointment or promotion on the basis of seniority and merit that is constitutionally protected under Arts. 14 and 16 (1) (i) (2) of the Constitution of India, 1950, even when the total number of Scheduled Castes members in that cadre holding posts are more than the prescribed percentage.* (Para 24).

*Held, that where Scheduled Caste/Backward Class secure an appointment against “a reserved point” on the basis of his own merit and seniority and not on the basis of only his being Scheduled Caste/Backward Class, such candidate should not be counted while calculating the percentage of reservant meant for Scheduled Castes/Backward, Class, but that reserved point should be carried over to the next point on the roster and filled by candidates belonging to Scheduled Castes/Backward Classes.* (Para 24).

*Held, that Scheduled Castes/Backward Classes candidates who are appointed or promoted on the basis of appropriate reservation under the prescribed roster point shall be assigned seniority as per*

the point reserved for them in the relevant roster irrespective of their position in the general merit list (in case of direct recruitment) in Class I, II, III and IV services. In other words, roster points are the seniority points in respect of Scheduled Castes/Backward Classes. In the case of Scheduled Castes/Backward Classes candidates getting selected or promoted on his own merit/seniority, he will retain his original higher seniority position secured by him. The seniority cannot be ambivalent and fluctuating. (Para 24).

*(This case was referred to Larger Bench by Hon'ble Mr. Justice S. D. Bajaj on 29th May, 1989 for decision of the conflicting approach of two Division Benches of this Court. The Larger Bench consisting of Hon'ble the Chief Justice Mr. V. Ramaswami, Hon'ble Mr. Justice S. D. Bajaj and Hon'ble Mr. Justice G. R. Majithia decided the matter on 23rd August, 1989).*

*Writ Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to issue :*

- (a) a writ in the nature of Mandamus directing the respondents to implement the judgment reported as 1982 (2) S.L.R. page 307, 'Joginder Singh Sethi' and others versus State of Punjab and others, and the instructions issued on 18th February, 1983 (Annexure P-7) ;*
- (b) a writ in the nature of mandamus declaring that the promotion of respondent No. 2 on the post of Additional Director Adult education is void, nonest and contrary to the directions issued by the Hon'ble Supreme Court of India in C.M.P. Nos. 3569-3570 of 1983 in C.A. Nos. 3326 & 3327 of 1982.*
- (c) a writ in the nature of Mandamus directing the respondents to consider and promote the petitioners on the post of Director Public Instructions (Schools) Punjab in accordance with P.E.C. Class I, Rules ;*
- (d) a writ in the nature of prohibition restraining the respondent No. 1 from promoting/appointing any member of the scheduled castes on the post of Director Public Instructions (Schools), Punjab ;*
- (e) filing of certified copies of annexures be dispensed with ;*
- (f) issuance of advance notices of motion on the respondents be dispensed with ;*

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(g) cost of this petition be also awarded in favour of the petitioners.

S. S. Nijjar, Advocate Bar-at-law and Puneet Jindal, O.P. Ali-  
puria and T. P. Singh, Advocates, for the petitioners.

H. S. Riar Senior D.A.G. (Pb.), for respondent No. 1.

R. K. Chopra, Advocate, for respondent No. 2.

H. L. Sibal, Senior Advocate, R. K. Handa, R. C. Setia, Nipun  
Mittal and R. S. Rai Advocates with him, for respondent No. 3.

K. B. Bhandari, Pardeep Bhandari and Vivek Bhandari, Advo-  
cates also, for respondent No. 3.

G. K. Chathrath, Advocate also for respondent Nos. 2 and 3.

#### JUDGMENT

V. Ramaswami, C.J.

(1) In this batch of writ petitions (Nos. 10952 of 1988, 4691 of 1987, 2189 of 1988, 2190 of 1988, 7806 of 1987, 7807 of 1987, 7860 of 1987, 7861 of 1987, 4441 of 1987, 2792 of 1983, 8540 of 1987, 3400 of 1987, 10213 of 1988, and 3182 of 1989), a common question relating to the scope and ambit of the Government orders relating to reservation of posts for Scheduled Castes/Tribes in the matter of appointment and promotions in the State Services, arises for consideration. The petitioners in all these cases are either employees in the office of the Director, Health Services and Family Welfare or the office of the Financial Commissioner, Punjab, or the Punjab Civil Secretariate or Class I Officers of Punjab Educational Services. The question relates either to the promotion from Assistant Superintendents to Superintendents or from Superintendents to under Secretaries or from Under Secretaries to Deputy Secretaries and in one case promotion to the post of Director in the office of Director, Public Instruction, Punjab.

(2) Before dealing with the points adumbrated, it would be necessary to trace and set out the relevant Government orders relating to reservation of posts for Scheduled Castes/Tribes (hereinafter referred to as Scheduled Castes for short, which expression shall, unless the context otherwise requires, include Scheduled Tribes) in the matter of new appointments and promotions. For historical reasons, visualising the difficulties that may have to be encountered in securing to weaker sections of its citizens justice, liberty, equality

and fraternity in a democratic system that allowed the power to go to the forward or influential communities, feudal interests and other stronger sections of society, the Constitution provided safeguards, under various Articles, to protect the weaker sections of the Community and especially providing for the reservation for Scheduled Castes in the matter of appointments and promotions under Article 16(4) of the Constitution. In fact, the Government even before the adoption of the Constitution took note of that provision in the Draft Constitution while it was under consideration of the Constituent Assembly and decided to give representation to the Scheduled Castes in the Services according to their population and by an order dated October 19, 1949, reserved, pending determination of the exact percentage of Scheduled Caste population in East Punjab, 15 per cent vacancies in all Services for Scheduled Caste candidates subject to their possessing the minimum qualification and suitability for the posts. The percentage was increased to 19 in Government proceedings dated August 19, 1952. In order to ensure to members of the Scheduled Castes their due share in Government services, the Government decided to adopt a block system of recruitment based on a formula of rotation and to fix the posts reserved for Scheduled Caste and accordingly in their proceedings dated December 8, 1953, the Government gave a formula of reservation for appointment on the basis of a block of five vacancies. That order provided that the first post in a block of five will have to be reserved for members of Scheduled Caste. The filling up of the other posts was open to all. It further provided that if it was not possible to fill the first reserved vacancy by appointment of a member of the Scheduled Castes, this vacancy may be filled by a non-Scheduled Caste candidate, in consultation with the Chief Secretary and the reservation should then be carried on from vacancy to vacancy in the same block until a suitable candidate for one vacancy in the block has been found. If all vacancies in the block are filled by non-Scheduled Castes candidates, the vacancy should be carried over to the second block, and in the second block of five, the first two vacancies are to be filled by Scheduled Caste candidates and if for any reasons even in the second block it was not possible to fill both the reserved vacancies, then one of the two reserved vacancies will have to be carried over to the third block. In other words, not more than one reserved vacancy will be carried over to the next block in any case. In the light of this reservation in a block of five and further instructions dated January 29, 1959, and having regard to the 19 per cent reservation for Scheduled Castes and 2 per cent reservation for Backward Classes, the Government

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notified the reserved posts or points in a block of 100 vacancies as follows:—

1, 6, 11, 16, 21, 26, 27, 31, 36, 41, 46, 51, 56, 61, 66, 71, 76, 81,  
86, 91, 96

Of these 26th and 27th posts in the 6th block were reserved for Backward Classes. The reservation was increased from 19 per cent to 20 per cent for Scheduled Castes candidates subject to the usual conditions relating to minimum qualifications. As we have noticed earlier, these Government orders related only to the new appointments and were not to apply to promotions. Finding that the Scheduled Castes candidates were poorly represented in various Services in the upper grades in the State Government, the Government decided to reserve 9 per cent of the higher posts to be filled by promotions for members of the Scheduled Castes and one per cent for backward classes and,—*vide* order dated January 14, 1964, applied this 10 per cent reservation to be filled by promotion to all State Services including Class I, II, III, and IV posts excepting All India Services. The reservation was to be given effect to by reserving for members of the Scheduled Castes first post in a block of 10 posts. The carry-forward rule as applicable to new appointments is also to be applied subject to the condition that no more than one vacancy shall be carried over from one block to the next in any case. This instruction contained an important clause which reads as follows :—

“In case an out of turn promotion has already been given to a candidate belonging to Scheduled Castes/Tribes or Backward Classes against a reserved vacancy and then in the same block it happened to be the turn of a candidate belonging to the said Castes/Classes for promotion, such candidate should not be ignored on the ground that 10 per cent reservation has already been exhausted.”

Doubts having been raised as to whether the reservation of 20 per cent for Scheduled Castes in Government Services at the time of new appointment should be in addition to the posts/vacancies secured by the said class on merit, the Government gave instructions that in case a greater number of candidate belonging to Scheduled Castes and other Backward Classes succeed on merit than the number of

posts reserved for them, all of them subject to the number of vacancies available should be considered for appointment.

(3) In spite of the fact that the instructions issued by the Government in regard to reservation are clear and unambiguous, the Government seemed to have been receiving reference seeking clarification and finding that in spite of the instructions on the subject from time to time, the representation of Scheduled Castes and Backward Classes in the State continued to be inadequate, the Government notified the following instructions in their communication dated July 30, 1970, relevant part of which reads as follows:—

“Certain reference have been received from various quarters seeking clarification as to whether the members of the Scheduled Castes/Backward Classes who get selected to particular posts on the basis of merit against the vacancies meant for the general pool or those who become eligible for promotion to higher posts by virtue of their seniority-cum-fitness may or may not be included in the percentage or reservation meant for them. The matter has been carefully examined by the Government and it has been decided that the 22 per cent reservation in services only indicates the broad-based policy of the Government to provide the requisite quantum of reservation in services but there is no bar to a large number of posts being secured by the members of the Scheduled Caste/Backward classes. In consequence the members belonging to the Scheduled Castes/Backward Classes who get selected on merits in the general list (in the case of direct recruitment) and those who become eligible for promotion to next higher posts by virtue of their seniority-cum-fitness should not be included, while calculating percentage of the reservation meant for Scheduled Castes/Backward Classes.....”

(4) By order dated May 4, 1974, the Government notified the reserved posts for Scheduled Castes for purposes of promotion in a block of 100 vacancies occurring from time to time as follows :—

1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, 94 and so on. Vacancies at S. Nos. 26 and 76 are to be treated as reserved for members of the Backward Classes.

The instructions further provided that the roster shall have to be implemented in the form of a running account from year to year.

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When the percentage of reservation for direct recruitment was increased from 20 per cent to 25 per cent, the roster points reserved for Scheduled Castes in a block of 100 vacancies was notified in the proceedings dated June 6, 1974, as follows :—

1, 5, 9, 13, 17, 21, 25, 29, 33, 37, 41, 45, 49, 53, 57, 61, 65, 69, 73,  
77, 81, 85, 89, 93, and 97 and so on.

Similarly, reservation for Backward Classes was also increased from 2 per cent to 5 per cent and accordingly the reserve posts for Backward Classes were fixed as 15, 35, 55, 75, and 95.

(5) Reiterating the earlier instructions, the Government also sent the following instructions dated January 7, 1980, the one which was mainly considered by the two Division Benches of this Court on an earlier occasion, which have given different view points. The said instructions read as follows :—

“I am directed to invite your attention to Punjab Government letter No. 1244-OSD (W)-2-70/19996, dated 30 July, 1970 on the above subject wherein it has been laid down that Scheduled Castes/Backward Classes candidates who get selected on merits in the general list in direct recruitment and those who become eligible for promotion to next higher posts by virtue of their seniority-cum-fitness, should not be counted for purpose of reservation and to say that there is a practice in some of the Departments where candidates/employees belonging to Scheduled Castes/Backward Classes who secure appointment against a reserve point on the basis of their merit/seniority are counted for the purposes of reservation. It is not proper. The representation of Scheduled Castes/Backward Classes in services is already much below the prescribed percentage. Keeping this in view, it is made clear that those Scheduled Castes/Backward Classes employees who get appointed/promoted against reserve points on the basis of their merit/seniority should not be counted for the purpose of reservation but that reserve point should be carried over to the next point on the roster and filled by a candidate/employee belonging to Scheduled Castes/Backward Classes so that the deficiency of representation in service is made up.”

Original instructions dated January 7, 1980, are in Punjabi and we have extracted the translation as given by the Government in the Supreme Court in proceedings pending before it which has been accepted by all the parties as correct translation. It may be mentioned that the translation adopted by the Division Benches of this Court was considered to be not an accurate translation.

(6) Government's circular No.7191-OSD(W)-69/18194, dated July 19, 1969, as amended on September 8, 1969, dealt with the assignment of seniority in appointments and promotions of Scheduled Castes and Backward Classes persons made on the basis of merit/seniority basis and that reads as follows :—

“According to the instructions, appointments of Scheduled Castes and Backward Classes persons are made on the basis of appropriate prescribed 100-points rosters and they should be assigned seniority as per the points reserved for them in the relevant 100-point roster irrespective of their positions in general merit-list (in the case of direct recruitment) or in general seniority list, (in the case of promotions) in Class I, II, III and IV services. In other words, roster points are seniority posts in respect of the members of Scheduled Castes and Backward Classes. This should be strictly followed by the recruiting agencies/appointing authorities at the time of preparing merit lists and appointments made by direct recruitment or by promotions.

*Note 1 :* In case, a Scheduled Castes or Backward Classes person get selected or promoted on his own merit/seniority he should retain his original higher position secured by him.

*Note 2 :* In case, a Scheduled Castes or Backward Class person get appointed/promoted on the basis of his merit/seniority against the reserved point, the very next point on the roster, will be treated as reserved for members of Scheduled Caste or Backward Classes, as the case may be, and the same will be filled on the basis of reservation.

*Note 3 :* While sending requisition to the Punjab Public Service Commission, Subordinate Services Selection Board and other recruiting agency, the vacancies/points reserved



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for Scheduled Castes and Backward Classes should specifically be indicated therein according to running roster so that such recruiting agencies could prepare and recommend the names accordingly. The merit lists/appointments will be subject to prescribed rosters."

(7) Learned counsel for the petitioners in all those cases contended firstly that the total number of candidates in a particular cadre at a particular time shall not be in excess of the prescribed percentage of reservation in that cadre for whatever be the reason and once that percentage is reached, the rest of the posts shall be available to the non-Scheduled Caste candidates only. The second argument of the learned counsel is that when a Scheduled Caste is promoted out of turn on the basis of that the roster point to be filled by promotion is reserved post, the seniority obtained through such promotion in the promoted category shall not be treated as final and on the promotion of the general category person subsequent to his promotion, the general category person takes his original seniority that he obtained before the promotion so far as the Scheduled Caste candidate is concerned and the general category person is to be placed over and above the reserve category person who was earlier junior to him in the previous cadre so that if a further promotion is to be made, the seniority in the initial recruitment cadre is maintained throughout the service. In other words, the *inter se* seniority between them in the cadre in which they were originally recruited or in the previous cadre before promotion is to be restored after both were promoted though the Scheduled Caste person was promoted earlier. Thirdly, the learned counsel contended that every time when a promotion is to be effected whether it be on the basis of merit or on the basis of roster point the number of Scheduled Caste candidates who are already holding posts in the cadre to which they have to be promoted will have to be taken into account and if there is a possibility of more than 50 per cent of cadre posts being filled up by the Scheduled Caste candidates, no scheduled caste candidate shall be appointed or promoted and the reservation should not also be given effect.

(8) In support of the contention that the total number of Scheduled Caste candidates holding the posts shall not be in excess of the prescribed percentage at any time, the learned counsel relied on a decision of this Court in *Joginder Singh Sethi and others v. Punjab Government and others*, (1). The facts in that case were

as follows : The cadre strength of Assistants in the office of the Chief Engineer, Irrigation Department, Punjab was 202. As per the instructions of the Government, 20 per cent reservation for promotion for members of the Scheduled Castes and 2 per cent for member of Backward Classes in Class III is to be made. In the total cadre strength of 202, thus the members of the Scheduled Castes and Backward Classes were entitled to only 42 posts and there being already 47 members of this category in that cadre, they were already in excess of the percentage of 22 reserved for such categories of persons and that, therefore, no further reservation for the promotion could be made. It may be mentioned that the petitioners in that case were senior to Respondents 3 to 6 therein and all of whom were employed as Clerks and Junior Scale Stenographers and they were entitled to be promoted to the posts of Assistant in the said department. They had prayed for a *mandamus* not to promote Respondents 3 to 6 who belonged to the Scheduled Caste category in preference to the petitioners who were senior to them on the basis of the reservation. The Division Bench held that the Scheduled Castes/Backward Classes people can take advantage of the reservation made in their favour on July 30, 1970 till their representation in the cadre of Assistants in the Irrigation Department of Punjab is reached or completed and not beyond that and for working out this percentage, the promotees/appointees in this cadre, whether on the basis of reservation or otherwise, have to be taken note of. The learned Judges reached this conclusion mainly on the following reasonings : The percentage of reservation is fixed on the basis of population of the Scheduled Castes and by implication when the total number of the members of the Scheduled Castes reach the prescribed percentage, the posts meant for them at reserved points cannot be kept reserved for them but to be thrown open to be filled exclusively by the persons of general category and further where the prescribed percentage is reached by the members of the Scheduled Castes the members of these classes can neither avail of the said instructions of the Government nor claim a right to compete for appointment or promotion even on merit or seniority-cum-merit as the case may be in respect of the remaining posts. The learned Judges were also not prepared to accept the argument on behalf of the Government that to find out the adequacy of representation given to the members of the Scheduled Castes, even on the basis of population an overall picture of the employees of this class of people in the service of the State has to be taken note of and not their strength in any particular cadre. The learned Judges were also of the view that

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the policy of reservation cannot be used for creating monopolies or for unduly disturbing the legitimate interests of other employees and that unlimited reservation or even reservation beyond the reasonable limit is bound to entrench upon the principles of equality before law or equal opportunity in joining Government service.

(9) The constitutional validity of various instructions in regard to these reservations were neither in question before the learned Judges who decided *Joginder Singh Seth's case* (supra) nor their validity is questioned before us.

(10) With great respect to the learned Judges, we are unable to agree with the assumption that the non-reserved posts are not available for the Scheduled Castes or Backward Classes though we may agree that the percentage of reservation was largely based on the basis of population. Any such restriction or limitation on Scheduled Castes and Backward Classes in the matter of opportunity to get appointed or promoted to such non-reserved posts on the basis of merit or seniority-cum-fitness will be contrary to the constitutional guarantee of equality of opportunity and will be hit by Articles 14, 15 and 16 of the Constitution. We are also unable to agree that either on the construction of the instructions dated January 7, 1980, or on the basis of the relevant instructions relating to the reservation or on any constitutional ground this view could be reached, we have already pointed out that the translation of the instructions dated January 7, 1980, the original of which was in Punjabi, which was placed before the Bench, was not quite accurate, especially the later part of the said instructions. The correct translation, which was accepted by all the parties, has already been extracted above. The first portion of the instructions refers to the earlier instructions of the Government dated July 30, 1970, wherein the Government had given clear instructions that the 22 per cent reservation in services indicates the broad-based policy of the Government to provide the requisite quantum of reservation in services but there is no bar to a large number of posts being secured by the members of the Scheduled Castes/Backward Classes. In consequence, the members belonging to the Scheduled Castes/Backward Classes who get selected on merits in the general list (in the case of direct recruitment) and those who become eligible for promotion to next higher posts by virtue of their seniority-cum-fitness should not be included, while calculating percentage of reservation meant for Scheduled Castes/Backward Classes. The instructions point out that in spite of this, there is a practice in some

of the Departments where candidates/employees belonging to Scheduled Castes/Backward Classes who secure appointment "against a reserve point" on the basis of their merit/seniority are counted for purposes of reservation and that is not proper. The instructions further noted that "the representation of Scheduled Castes/Backward Classes employees in service is much below the prescribed percentage." In the light of this, the later portion of the instructions reads as follows :—

"Keeping this in view, it is made clear that those Scheduled Castes/Backward Classes employees who get appointed/promoted against reserve points on the basis of their merits/seniority should not be counted for the purpose of reservation but that reserve point should be carried over to the next point on the roster and filled by a candidate/employee belonging to Scheduled Castes/Backward Classes so that the deficiency of representation in service is made up."

As may be seen from the portion extracted, the translation placed before the Division Bench has completely misdirected the view of the learned Judges. The translation placed before the learned Judges did not refer to the appointment and promotion "against reserved points" and that such appointments or promotions against reserved points on the basis of their merit and seniority are not to be counted "for the purpose of reservation" but that the reserved point should be carried over to the next point on the roster and that the said next point on the roster is to be filled by a candidate belonging to the Scheduled Castes/Backward Classes so that the deficiency in representation in services is made up. Thus what is dealt with in the last portion of instruction dated January 7, 1980 is filling of a reserved point vacancy on the basis of selections or on the basis of seniority-cum-merit by a Scheduled Caste candidate and not filling up of the same on the basis that the post is reserved for a Scheduled Caste candidate. In such a case, the reserved point should be carried over to the next point on the roster so that the deficiency in the percentage of representation as reserved points is made up. The seniority of such Scheduled Caste/Backward Class appointees and promotees are dealt with in the instructions dated July 19, 1969. According to this circular Scheduled Castes/Backward Classes person who get selected or promoted on his own merit/seniority should retain his original higher position secured by him. Those who are appointed or promoted on the basis of reservation at

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the appropriate prescribed 100 point roster, roster point shall be the seniority point. This does not also involve any question of the reservation creating any monopoly or unduly disturbing the legitimate interests of other employees. What was overlooked by the learned Judges is that in respect of the posts which have not been reserved, the instructions dated July 30, 1970, which has been referred to in the first sentence of the instructions dated January 7, 1980, covers and the non-reserved posts being open to all including Scheduled Castes under the Constitution, it stated that when a Scheduled Caste candidate gets selected to that post on merits in a direct recruitment and those who get promotion to the next higher post by virtue of their seniority-cum-merit shall not be counted for purposes of reservation. It is also not correct to state that the non-reserved points are reserved for non-scheduled castes. In respect of those open categories, all including Scheduled Castes are entitled to compete on merit if it is a direct recruitment and if they are eligible for promotion according to seniority and merit are also entitled to be promoted. The reservation in favour of Scheduled Castes does not mean that is the maximum number of posts that can be held by Scheduled Castes candidates in that particular cadre. They are the reserved points which Scheduled Caste candidates alone can contest.

(11) It is also now well-settled that Article 16 is not meant to apply only for initial appointments but that it includes the entire service and the promotion of such employees till retirement (*vide* A.I.R. 1962 S.C. 36). The rights conferred on the individual under Article 16 (1), (2) are not dependent on somebody else being already there. It is a right of the individual himself. The mere factual position of somebody belonging to the same class is already there, does not deprive him of the constitutional right of equality of opportunity in matters relating to employment/appointment to an office under the State. Nor can any such reservation in favour of non-Scheduled Caste/Backward Class could be sustained under Articles 14, 15 and 16 of the Constitution. The instructions we have extracted above are thus also consistent with the constitutional provisions and enjoin upon the authorities not to deprive a Scheduled Caste candidate a right to be promoted on the ground of seniority-cum-merit even in respect of roster points which are not reserved for Scheduled Castes, nor the instructions in any way restrict the total number of Scheduled Caste candidates not exceeding to the prescribed percentage.

(12) The decision of the Madhya Pradesh High Court in *G. C. Jain and others v. Divisional Rail Manager, C. Rly. Jabalpur and*

*others* (2), is primarily based on the decision of this Court in *Joginder Singh Sethi's case* (supra). We are also, with respect, unable to agree with the view of the learned Judges. The reservation is to posts and not to vacancies as and when they occur. When a percentage of reservation is fixed in respect of a particular cadre and the roster fixes the reserved point, it has to be taken that the particular post at the reserved point in the roster is that that has been reserved. It is not possible to contend that when in a pack of 100 or 40 or 5 or whatever the number may be, the reserved points are fixed, that can be dereserved by continuous appointment of Scheduled Caste candidates on the basis of seniority-cum-merit on open general points. The reservation is at the roster point and the non-Scheduled Caste candidate cannot be considered at a point reserved for a Scheduled Caste candidate unless any Scheduled Caste candidate is not available in which case the rule relating to carry forward will have to be followed. Nor can it be said that with reference to a reserved or non-reserved points when a Scheduled Caste candidate is selected or promoted on the basis of purely seniority-cum-merit, he is filling up a reserved post. With great respect, we, therefore, unable to agree with the view expressed by the learned Judges in *G. C. Jain's case* (supra).

(13) The decision in *Gurjit Singh Randhawa v. State of Punjab and another* (3), referred by the learned counsel does not deal with the present point at issue. There the question for consideration was as to whether the weightage which could be given in admission test for admission into Medical Colleges in respect of Sportsmen/Sportswomen based upon their gradation could be added to the marks secured in the admission test and it was held that the candidate who is a sportsman cannot have double benefit, i.e. that after getting weightage he first competes for the reserved category seats and thereafter again takes benefit in the general category and that the benefit of weightage can be availed of by a candidate only when his case is to be considered for the reserved category; otherwise his marks without weightage shall be taken into consideration for determining his merit in the general category.

(14) On the other hand, we have a direct decision of this Court (*Gurmel Bhatwa v. The State of Punjab and others*) (4), where another Division Bench of this Court with reference to the same

(2) 1986 (1) S.L.R. 588.

(3) A.I.R. 1985, Punjab and Haryana, 162 (F.B.)

(4) C.W.P. No 5346 of 1987 decided on June 3, 1988.

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Government instructions has taken the view that the points specifically reserved for members of the Scheduled Castes and Backward Classes have to be offered to them alone and that if some members of the Scheduled Castes had come on the basis of overall merit, without reference to reservation, they could not be taken into account while calculating the percentage of Schedule Castes in the service or cadre. When the attention of this Division Bench was invited to *Joginder Singh Sethi's case* (supra), the learned Judges referred to a decision of the Supreme Court in *Hira Lal v. The District Judge, Ghaziabad* (5), and in view of that judgment, they held that they are unable to follow the judgment in *Joginder Singh Sethi's case* (supra). In *Hira Lal's case* decided by the Supreme Court, the facts were as follows : The petitioner was a Scheduled Caste candidate. He offered himself as a candidate for one of the posts of Stenographers in Hindi in the establishment of District Judge at Ghaziabad in the State of Uttar Pradesh. Six posts were advertised and in the final list of successful candidates, the petitioner was shown as No. 7 and, therefore, he was not selected. He contended that 18 per cent of the posts should have been reserved for members of Scheduled Caste as per the Government instructions and if this reservation had been kept in view, he should have been selected even if he had secured the seventh place in the merit list. In the written statement it was contended by the Government that in the selection for the six posts, no reservation has been intended to be made in view of the position that the post of Stenographer is covered under Class III service and the total strength of the Class III employees in the judgeship of Ghaziabad as on May 1, 1987, was 132 and there were as many as 28 among them belonging to the Scheduled Castes which came to more than 21 per cent—3 per cent above the reservation. Repelling the contention, the Supreme Court observed :—

“When six vacancies were being filled up at a time in one year, if the roster was to be followed, one of the posts would indisputably have gone to the candidate of the scheduled castes. The stand taken in the counter-affidavit that more than 21 per cent of the posts in the Grade III cadre of the Judgeship were being manned by the people belonging to the scheduled castes at the relevant time is no answer to the prescription of the roster. It is not

known whether some of the recruits of earlier years already in service belonging to the scheduled castes had come on the basis of overall merit without reference to reservation.

On this premise, if the provision of reservation had to be kept in view, the petitioner was bound to have been recruited. We allow the petition. As per the roster, he was entitled to be appointed against the first vacancy, we therefore, direct the appointing authority to appoint the petitioner in that vacancy and five out of six who are respondents 3 to 8 before us according to their position in the final merit list shall be retained.”

(5) Since this decision directly answered the contention of the learned counsel for the petitioners, the Division Bench which decided C.W.P. No. 5346 of 1987 did not find it necessary to refer the matter to a Full Bench. The ratio of this judgment also shows that in the case of appointment at a reserved point in a roster the seniority of Scheduled Caste/Backward Class candidate shall be the roster point. The Scheduled Caste candidate though was seventh in the merit list was directed to be appointed at the first vacancy taking seniority over all the others.

(16) The decision in (*Miss Hawa Kaur v. The State of Haryana* and others (6) relied on by the learned counsel for the petitioners related to admission to Medical College, Rohtak, which is a Government maintained college. The petitioner belonged to a village called Matanhail in Jhajar Tahsil in the District of Rohtak, which has been declared by the Punjab/Haryana Government as “backward area” The rules for admission to the first year class of the M.B.B.S. Course provided a reservation of 15 seats out of 150 for backward area’ in Haryana apart from the reservation that had been made for Scheduled Castes, Scheduled Tribes, Backward Classes, Sportsmen etc. The petitioner was denied a seat in the category of belonging to backward area on the ground that in the open merit list itself, the number of candidates who were selected and who hailed from that backward area exceeded more than the prescribed quota of 15. The contention of the petitioner was that the candidate from the backward area were entitled to their quota irrespective of the fact that in the open merit list their number had exceeded more than the quota

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(6) C.W.P. 2505 of 1973 decided on August 24, 1973.



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reserved for them. While rejecting this contention, the learned Judges observed :—

“The idea of reservation is to give representation to candidates coming from backward area or belonging to backward classes. It could never be the intention of the legislature that the class for whom reservation has been made should be allowed to get double benefit, that is that the candidates of that class may get seats by open competition and also lay hands on the seats which are reserved for them.”

The reference to backward classes in this passage is incorrect but this will have to be restricted to backward area. The learned Judges also considered on the basis of the prospectus issued that it could not have been intention of the Government to give double benefit to those people who had come from the backward area, one to compete for open merit and the other to lay their hands on the seats reserved for them. The Constitution does not permit any reservation for backward area and, therefore, the decision itself was on the interpretation of the prospectus that it was not the intention of the Government to give double benefit. Therefore, the decision has no bearing on the issue now in question. However, if it is to be construed that a Scheduled Caste candidate could not compete for a general open pool seat, this decision, in our opinion, is incorrect and we cannot follow the same, as any such construction would be against the provisions contained in Articles 14, 15 and 16 of the Constitution. This decision is, therefore, of no assistance to the learned counsel for the petitioners.

(17) For the foregoing reasons, we are unable to agree with the ratio of the judgment in *Joginder Singh Sethi's case* (supra) and the decision in C.W.P. No. 2505 of 1973, dated August 24, 1973.

(18) We are also unable to agree with the learned counsel on the second point raised by him that the *inter se* seniority between the Scheduled Caste candidate was promoted out of turn on the basis of the roster point to be filled by promotion is a reserved post and the non-Scheduled Caste candidate who was promoted to that cadre subsequently shall be the *inter se* seniority between them in the cadre in which they were originally recruited or in the previous cadre before promotion. In other words, the seniority of the Scheduled Caste in the cadre to which he was promoted would be

ambivalent and fluctuating so that his seniority will always be going up and down during his entire tenure depending upon the seniority of the general category candidates in the previous cadre who were subsequently promoted. Whatever source from which the recruitment is made, the seniority is normally to be determined with reference to the appointment or promotion to that particular cadre as once they are recruited or promoted, they form one class and the length of service in that class alone would be the basis for determining the seniority. The Supreme Court had considered the question of validity of certain privileges made for a class of persons who were recruited from a particular source in the decision reported in *Roshan Lal Tandon v. Union of India and others*, (7). Briefly, the facts in this case were thus; The recruitment to the posts of Train Examiners Grade 'D' was to be from two different sources, namely, one from Apprentice Train Examiners and the other by skilled artisans. Further promotion from Grade 'D' to Grade 'C' is to be made from the integrated cadre on the basis of seniority-cum-suitability. By a notification dated October 27, 1965," 80 per cent of the vacancies in Grade 'C' should be filled by Apprentice Train Examiners who had been absorbed in Grade 'D' before March 31, 1966. Holding that the notification is violative of Articles 14 and 16 of the Constitution, the Supreme Court held that discrimination cannot be in favour of recruits from one source against recruits from other source in the matter of further promotion as once they are absorbed in one cadre they form one class and seniority-cum-merit alone could be the basis. Mr G. K. Chatrath, learned counsel appearing for one of the respondents, relying on this judgment contended that the argument of the learned counsel for the petitioners would be just against the ratio of this decision. We agree with the learned counsel. If after promotion, they belonged to the same particular cadre, the date of promotion and seniority in service in that cadre alone are relevant for the purpose of determining seniority-cum-merit and not the earlier seniority because any other view would be discriminatory and offending Article 16 of the Constitution.

(19) Again, in *Railway Board v. A. Pichmani* (8), the Supreme Court held that on the amalgamation of Railway Companies, State Railway with Indian Railway Administration, the employees of Company are entitled to same rights and privileges that are available to other employees who joined Railway Administration and that

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(7) 1967 (1) S.L.R. 832

(8) 1972 S.L.R. 165

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any discrimination between them in regard to the age of retirement would be invalid. In other words, once they come to the particular cadre, the rules applicable to that cadre will have to be applied whatever be the sources from which promotion or integration has been made.

(20) In *State of Mysore v. M. H. Krishna Murthy and others* (9), the Supreme Court again emphasized the same principle and held that no discrimination can be made for further promotion from the integrated cadre on the basis of initial source of recruitment.

(21) The point was directly considered by the Supreme Court in *Karam Chand v. Haryana State Electricity Board* (10). The question for consideration in that case was, whether an employee promoted to a post reserved for Scheduled Castes and Scheduled Tribes is entitled to have his seniority determined from the date of his appointment to the post or his seniority *inter se* will be reckoned as it was in the class or grade from which he was promoted to a post in the higher rank. After referring to certain seniority rules, the Supreme Court held that the seniority of the appellant is to be reckoned from the date of his appointment by promotion to the post reserved for Scheduled Castes and his seniority *inter se* cannot be reckoned with reference to the class or grade from which he was promoted.

(22) The decision of the Supreme Court in *State of Punjab v. Hira Lal and others* (11), is yet another decision which is directly in point. In that case, notification of the Punjab Government dated January 14, 1964, the relevant portion of which we have already extracted above, was considered. In that case, though the High Court was of the opinion that the reservation made for the Scheduled Castes, Scheduled Tribes and Backward Classes is not impermissible under the Constitution, the Government has violated Article 16(1) by reserving the first out of a group of 10 posts for the Scheduled Castes, Scheduled Tribes and Backward Classes. This was on the basis of certain hypothetical cases under which reservation of the type could lead to various anomalies such as the person getting the benefit of the reservation may jump over the heads of several of his seniors not only in his own grade but even in the higher grades.

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(9) 1972 S.L.R. 932.

(10) A.I.R. 1989 S.C. 261

(11) 1971 S.C. 1777

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The High Court also visualised the possibility of Head Assistant leaping over the heads of several seniors of his in the grade of Head Assistants and thereafter in the grade of Superintendent; subsequently in the grade of Under Secretaries, Deputy Secretaries and so on and so forth. Reservation the judgment if the High Court, the Supreme Court observed:—

“The extent of reservation to be made is primarily a matter for the State to decide. By this we do not mean to say that the decision of the State is not open to judicial review. The reservation must be only for the purpose of giving adequate representation in the services to the Scheduled Castes, Scheduled Tribes and Backward Classes. The exception provided in Article 16(4) should not make the rule embodied in Article 16(1) meaningless. But the burden of establishing that a particular reservation made by the State of offensive to Article 16(1) is on the person who takes the plea. The mere fact that the reservation made may give extensive benefits to some of the persons who have of the reservation does not by itself make the reservation bad. The length of the leap to be provided depends upon the gap to be covered.

It is true that every reservation under Article 16(4) does introduce an element of discrimination particularly when the question of promotion arises. It is an inequitable consequence of any reservation of posts that junior officers are allowed to take a march over their seniors. This circumstance is bound to displease the senior officers. It may also be that some of them will get frustrated but then the Constitution makers have thought fit in the interests of the society as a whole that the backward class of citizens of this country should be afforded certain protection.....”

Ultimately, the Supreme Court held that reservation of appointments under Article 16(4) cannot be struck down on hypothetical grounds or on imaginary possibilities.

(23) These decisions, in our view, are weighty authorities against the argument of the learned counsel. We are, therefore, of the view that there is no substance in the argument of the learned counsel based on the *inter se* seniority between the parties before the promotion was effected.

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(24) Thus, while non-Scheduled Caste candidates are not eligible for appointment or promotion to the reserved posts at the reserved point, the Scheduled Caste candidates are eligible to compete with the general category candidates in respect of the posts which are not reserved and also claim promotion to the same if they are otherwise eligible by virtue of seniority and merit and merely because they happen to be members of the Scheduled Caste, they cannot be deprived of their right to compete for appointment or promotion on the basis of seniority and merit that is constitutionally protected under Articles 14 and 16(1), (2) of the Constitution even when the total number of Scheduled Castes members in that cadre holding posts are more than the prescribed percentage. Secondly, where Scheduled Caste/Backward Class secure an appointment against "a reserved point" on the basis of his own merit and seniority and not on the basis of only his being Scheduled Caste/Backward Class, such candidate should not be counted while calculating the percentage of reservation meant for Scheduled Caste/Backward Class, but that reserved point should be carried over to the next point on the roster and filled by candidates belonging to Scheduled Castes/Backward Classes. Thirdly, Scheduled Castes/Backward Classes candidates who are appointed or promoted on the basis of appropriate reservation under the prescribed roster point shall be assigned seniority as per the point reserved for them in the relevant roster irrespective of their position in the general merit list (in case of direct recruitment) in Class I, II, III and IV services. In other words, roster points are the seniority points in respect of Scheduled Castes/Backward Classes. In the case of Scheduled Castes/Backward Classes candidate getting selected or promoted on his own merit/seniority, he will retain his original higher seniority position secured by him. The seniority cannot be ambivalent and fluctuating.

(25) The third contention of the learned counsel was that in any case while giving out of turn promotion on the basis of reservation or promotion to the general category post on the basis of seniority-cum-merit, the possibility of the Scheduled Caste candidates holding more than 50 per cent of the cadre posts have to be kept in view and if that is going to exceed 50 per cent, the reservation should not be given effect to and no Scheduled Caste candidate shall be promoted even on the basis of seniority-cum-merit. In this connection, he relied on certain passages in the decisions of the Supreme

Court reported *M. R. Balaji and others v. The State of Mysore and others* (12), and *T. Devadasan v. Union of India and another* (13). The particular passage in *M. R. Balaji's case* (supra) strongly relied on by the learned counsel reads as follows :—

“A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, special provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case.....”

The relevant portion in the majority judgment in the case reported in A.I.R. 1964 S.C. 179, which was relied on by the learned counsel reads as follows :—

“It is an accepted fact that members of the Scheduled Castes and Tribes are by and large backward in comparison with other communities in the country. This is the result of historical causes with which it is not necessary for us to deal here. The fact, however, remains that they are backward and the purpose of Art 16(4) is to ensure that such people, because of their backwardness should not be unduly handicapped in the matter of securing employment in various services of the State. This provision, therefore, contemplates reservation of appointments or posts in favour of backward classes who are not adequately represented in the services under the State. Where therefore, the State makes a rule providing for the reservation of appointments and posts reserved for such backward classes, it cannot be said to have violated Art. 14, merely because

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(12) A.I.R. 1963 S.C. 649.

(13) A.I.R. 1964 S.C. 179.

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members of the more advanced classes will not be considered for appointment to these posts even though they may be equally or even more meritorious than the members of the backward classes, or merely because such reservation is not made in every kind of service under the State. Where the object of a rule is to make reasonable allowance for the backwardness of members of a class by reserving certain proportion of appointments for them in the public services of the State what the State would in fact be doing would be to provide the members of backward classes with an opportunity equal to that of the members of the more advanced classes in the matter of appointments to public services. If the reservation is so excessive that it practically denies a reasonable opportunity for employment to members of other communities, the position may well be different and it would be open then for a member of a more advanced class to complain that he has been denied equality by the State."

It may, however, be mentioned that on the interpretation of the inter-relationship between clauses (1), (2) of Article 16 and clause (4) of that Article, majority judgment in the decision of the Supreme Court in *State of Kerala and another v. N. M. Thomas and others* (14), took a contrary view to that in A.I.R. 1964 S.C. 179, which, in our opinion, may have a bearing on the test for reasonableness of the reservation made under Article 16(4), but that need not detain us because the constitutional validity of the reservation orders in this case is not in dispute. Further, the Supreme Court in *K. C. Vasanth Kumar and another v. State of Karnataka* (15), have explained these observations in the judgment in A.I.R. 1964 S.C. 179. After referring to the historical backward of the reservations it was observed that there is neither statistical basis nor expert evidence to support the assumptions that efficiency will necessarily be impaired if reservation exceeds 50 per cent, if reservation is carried forward or if reservation is extended to promotional posts. After referring to *Balaji's case* (supra), Chinnappa Reddy J. observed :—

(26) We are not prepared to read *Balaji* as arbitrarily laying down 50 per cent as the outer limit of reservation. What precisely

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

(15) A.I.R. 1985 S.C. 1495.

was decided by Balaji has been summed up by the Court itself at page 471 of the SCR: (at P. 663 of AIR) in the following words :—

“We have already noticed that the impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not permitted by Art. 15(4): and we have also held that the reservation of 68 per cent made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Art. 15(4). Therefore, it follows that the impugned order is a fraud on the Constitutional power conferred on the State by Art. 15(4).”

We must repeat here, what we have said earlier, that there is no scientific statistical data or evidence of expert administrators who have made any study of the problem to support the opinion that reservation in excess of 50 per cent may impair efficiency. It is a rule of thumb and rules of the thumb are not for judges to lay down to solve complicated sociological and administrative problems. Sometimes, it is obliquely suggested that excessive reservation is indulged in as a mere votecatching device. Perhaps so, perhaps not. One can only say ‘out of evil cometh good’ and quicker the redemption of the oppressed classes, so much the better for the nation. Our observations are not intended to show the door to genuine efficiency. Efficiency must be a guiding factor but not a smoke screen. All that a Court may legitimately say is that reservation may not be excessive. It may not be so excessive as to be oppressive; it may not be so high as to lead to a necessary presumption of unfair exclusion of everyone else.

(27) A full Bench of this Court in *Kanwal Parkash and others v. The State of Punjab and others* (16) had made following observations :—

“The apprehension of the petitioners that if the members of the Scheduled Castes keep on being promoted in accordance with the Government instructions, in about ten years time about one half of the posts of Deputy Superintendents, 1/3rd posts of the Superintendents and 3/4th of the



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posts of Under Secretaries would be occupied by the members of the Scheduled Castes alone is really unfounded. At least no material has been brought on record of these cases which may justify such an apprehension. Indeed, if such a calamity becomes imminent, it is reasonable to assume that the State Government which has issued these instructions would step in to modify the instructions or to do away with them completely."

(28) Though these decisions are authority for the proposition that the reservation may not be excessive and it may not be so excessive as to be oppressive or may lead to an unfair exclusion of everyone else, it is pertinent to point out in this case that the legality of the reservation itself is not questioned, nor has it been shown to us that the reservation was oppressive or in any way unreasonable or excessive.

(29) In C.W.P. No. 10952 of 1988, this aspect of the case was highly pressed into service with regard to the facts in that case. The two petitioners in that case were appointed on December 28, 1981 to Class 1 of the Punjab Educational Service by direct recruitment along with the third respondent. It was claimed that petitioners 1 and 2 were senior to the third respondent but this is not admitted and is a subject-matter of another writ petition (C.W.P. No. 3182 of 1989). The third respondent is a Scheduled Caste candidate and it is stated that she was selected and appointed to Class I service by direct recruitment on the basis of reservation for members of Scheduled Castes. The second respondent in the case had reached Class I service by promotion from Class II and it is not in dispute that petitioners and the third respondent are junior to him. In the Punjab Education Service, Class I cadre has a sanctioned strength of 27 posts of which 25 per cent posts are filled by direct recruitment and 75 per cent by promotion. Of the 27 posts in the Class I cadre, 4 posts formed a separate cadre and these four posts are D.P.I. (Schools), C.P.I. (Primary), Director, (SCERT) and Additional Director, Adult Education. The filling up of these four cadre posts in Class I is done on the basis of selection from amongst Class I officers in accordance with the rules. It is further stated that the first three posts had already been filled up and the 4th one is lying vacant since September 1986. Of the three candidates who are holding the three posts in the cadre, two, namely, the second respondent and another are stated to be Scheduled Castes. The validity of selection of Respondent No. 2 is questioned in the writ petition on the ground that is against the ratio of the judgment in Joginder Singh Sethi's case

as there was already another Scheduled Caste candidate holding, a post in that cadre and only 14 per cent in the cadre could be reserved for Scheduled Castes. Apprehending that the 4th post may also be filled up by the third respondent, who is otherwise eligible for selection on merits, the petitioners have also prayed for a writ of Prohibition restraining the Government from considering and promoting/appointing any member of the Scheduled Caste to that post and for a *mandamus* directing the Government of consider and promote the petitioners do that post. The petitioners have mainly relied on *Joginder Singh Sethi's case* (supra) in support of the contention that the 2nd respondent should not have been appointed as there was already another Scheduled Caste candidate and the reservation can be only upto 4 per cent and that since in any case by appointment of Respondent No. 2, 50 per cent of the candidates holding the position in that cadre belonged to Scheduled Castes, the 4th post should not be filled up by another Scheduled Caste candidate. It is not in dispute and could not be disputed that the two Scheduled Caste candidates who are holding the posts of D.P.I. cadre were selected and appointed purely on seniority-cum-merit basis and not on any principle of reservation. We have already held that reservation does not mean that the Scheduled Castes candidates are deprived from being considered for promotion to the general category seats on the basis of seniority-cum-merit or on the basis of selection on merit. It is also not possible to invoke the principle of reservation not exceeding 50 per cent on the total strength as reaching above 50 per cent is not by reason of any such reservation as such but it so happened that the candidates who competed for the selection belonged to a particular category and all of them were found to be suitable on merit and ability. It has been pointed out in the counter-statements that on a number of occasions previously all these posts were held by non-Scheduled Castes. But if two Scheduled Castes had already come purely on merit it is to be taken as a matter gratifying and not to be frowned upon. It is only if reservation in effect amounted to an unreasonable percentage that could if at all be questioned. The percentage of reserved candidates in this case is only 14 and if the Scheduled Castes candidates have come and occupied that position in that cadre on account of their own merit and ability, the reservation itself could not be questioned and they could not be deprived of their right to be considered for selection on the basis of merit and ability. We are, therefore, unable to accept the contention of the learned counsel for the petitioners that the Scheduled Castes candidates cannot be considered for the vacant post. There is also no substance in the contention of the petitioners that the third respondent in C.W.P. No. 10952

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of 1988 is not eligible to be considered for selection to the post of Director of Public Instruction (Schools).

(30) We may note at this stage an argument of the learned counsel based on certain stay orders passed by the Supreme Court in the appeal preferred against the judgment in *Joginder Singh Sethi's* case (supra). While admitting the appeal preferred by the State Government, the Supreme Court on October 18, 1982, passed some interim order of stay. Doubts having arisen about the scope of the interim order, the matter again came up before the learned Judges who passed a clarification order on February 8, 1983, and that reads as follows :—

“We made it clear by our order dated 19th October, 1982 that there will be an interim order of stay against reversion of any of the persons already appointed on the basis of instructions issued by the Government of Punjab which have been held to be invalid by the judgment of the High Court impugned in these appeals and writ petitions. We do not think that there is any doubt in regard to what we said, namely, that no scheduled caste and scheduled tribe employee who has already been appointed or promoted pursuant to the instructions of the Government of Punjab shall be reverted but so far as the future appointments/promotions are concerned, these shall be made according to the judgment of the High Court and these will be ultimately subject to the result of the writ petition and the appeals. If the Government makes any appointments/promotions in accordance with the judgment of the High Court the State Government will make it clear in the letter of appointment/promotion that the appointment/promotion is subject to the result of the writ petition and the appeals so that there is no difficulty in further in case the High Court judgment is reversed by this Court. It appears that certain doubts were raised in regard to the last part of our order as a result of which applications for contempt have been taken out against the State Government and its officers. We are making this order in order to clear doubts, if any, so that the State Government and its officers may be in a position to carry out our order without any difficulty. We have already directed that appeals and writ petitions will be heard on 30th November, 1982 subject to overnight part-heard

matter but unfortunately due to heavy pressure of work it was not been possible to place them on board for final hearing on 30th November, 1982. We would direct that the appeals and writ petitions be heard preemptorily subject to overnight part-heard matter on 8th March, 1983.

Advocate for the respondent states before us that in view of the clarification given by us the respondents will withdraw their application for contempt."

Relying on this order, the learned counsel contended that the writ petitions now posted before us could not be taken up for final decision and that should await the decision of the Supreme Court. The writ petitions before us are independent writ petitions though the ratio of the judgment in *Joginder Singh Sethi's case* was relied on by the learned counsel for the petitioners. Hearing of the case which was expected to be done by the Supreme Court on November 30, 1982, which was again directed to be posted on March 8, 1983, has not taken place so far. In the meantime, another Division Bench of this Court in C.W.P. No. 5346 of 1987, referred to above, has taken a different view. The decision of the Supreme Court in *Hira Lal's case* (supra) which was also directly in point had not been considered by the High Court in *Joginder Singh Sethi's case*. The writ petitions before us are not between the same parties as those who were involved in *Joginder Singh Sethi's case*, nor, in our opinion, the interim order of the Supreme Court can be construed as prohibiting us from considering the identical question of law as decided in *Joginder Singh Sethi's case* that arises in any other case. In view of the conflict of judgments and in view of the fact that a number of postings and promotions have to be done in the meantime, it had become necessary for us to consider the question by a Full Bench. We are not, therefore, persuaded by the argument of the learned counsel that either we have no jurisdiction to hear the writ petitions before us or that we have to await the decision of the Supreme Court. This contention, which is in the nature of a preliminary objection is, therefore, overruled.

(31) In C.W.P. No. 3182 of 1989 one additional point has been raised. That related to the dispute relating to seniority between the petitioners and the third respondent. We have already held in the earlier part of our judgment that the seniority will have to be decided in respect of Scheduled Castes, Scheduled Tribes and Backward Classes candidates appointed or promoted in accordance with the Circular dated July 19, 1969, and as per that Circular, the

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roster points are the seniority points in respect of members of the Scheduled Castes, Scheduled Tribes and Backward Classes. The petitioners have questioned the validity of fixation of seniority in Annexure P.4 dated November 29, 1988, as being violative of certain instructions. In the written statement filed by the Government, in CWP No. 10952/88 it is stated that the petitioners have filed their representation against the fixation of third respondent's seniority over the petitioners and that is under consideration. In view of the statement that the Government is considering the question of seniority, learned counsel for the petitioners did not raise any further dispute and wanted to await the result Government's decision on the petitioner's representation. Therefore, with a direction to the Government to dispose of their representation on merits within a period of three weeks this writ petition is dismissed.

For the foregoing reasons, there are no merits in any of these writ petitions and all of them are dismissed, but there will be no order as to costs.

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S.C.K.

*Before : G. C. Mital and A. L. Bahri, JJ.*

GURDEV KAUR AND ANOTHER,—Appellants.

*versus*

MEHAR SINGH AND OTHERS,—Respondents.

*Regular Second Appeal No. 2061 of 1987.*

July 28, 1988.

*Indian Registration Act (XVI of 1908)—S. 17(2) (vi)—Compromise decree regarding immoveable property—Value of such property more than Rs. 100—Title in such property created for the first time in decree—Such decree—Whether requires registration—Compromise decree challenged in subsequent suit—Grounds for such challenge—Stated.*

*Held*, that a compromise or consent decree does not require registration even if it creates title in respect of immoveable property of the value of Rs. 100 or more provided it is subject matter of the suit.