

under section 13-B of the Act. Once the parties with the help of their common relations decided in principle that the parties should gracefully part company by making an application under section 13-B, the rest was only a legal formality. The statement that the parties had been living separately for more than one year was thus in compliance with the requirements of section 13-B. One of the conditions for attracting the application of section 13-B of the Act is that the parties have been living separately for a period of one year or more. It may also be pointed out that Mr. Justice T. R. Handa (PW-3), who played an active role in bringing about reconciliation between the parties was totally silent with regard to the fact that the appellant had left the matrimonial home in November 1986. On a consideration of all these factors, I am unable to agree with the conclusion reached by the trial Court in so far as the ground of desertion is concerned. I, therefore, reverse the finding of the trial Court on this issue and hold that the respondent-husband failed to prove the ground of desertion.

In the result, in view of the finding under issue No. 2, the appeal fails and the same is dismissed, with no order as to costs.

R.N.R.

Before : Hon'ble Mr. Justice Jawahar Lal Gupta.

RASILA RAM,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.
Civil Writ Petition No. 2067 of 1992.

April 23, 1992.

Constitution of India, 1950—Art. 226—Benefits of reservation—Promotion—Petitioner a Scheduled Caste employee of Haryana—Denied promotion on ground that petitioner is not domiciled in Haryana—Action of respondents denying promotion challenged—Held that petitioner a Haryana Government employee is bonafide resident and therefore entitled to get all benefits of reservation.

Held, that residents of another State on employment in the State of Haryana do not cease to be members of a particular caste to which they actually belong. As in the present case, a Chamar, who belongs to the category of Scheduled Caste in the State of Himachal Pradesh and is also recognised as such in the State of Haryana, continues to be a member of that class. By virtue of the instructions dated December 18, 1973, he becomes a bona fide resident of the State of Haryana and thus entitled to the benefit of reservation.

(Para 10)

Civil 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 Certiorari quashing the advice dated 5th February, 1992 (Annexure P-8) and order dated 7th February, 1992 (Annexure P-10);*
- (b) *a writ in the nature of mandamus directing the respondents to consider the claim of the petitioner for promotion on to the post of Dy. Superintendent and to issue Regular promotion order if found suitable;*
- (c) *any other suitable writ, order or direction which this Hon'ble Court deems fit and proper in the peculiar circumstances of this case;*
- (d) *condition of filing of certified copies of annexures be dispensed with;*
- (e) *condition of issuance of advance notices of motion on the respondents be dispensed with;*
- (f) *costs of this petition be also awarded in favour of the petitioner.*

It is further prayed that during the pendency of the writ petition, operation of advice dated 5th February, 1992 (Annexure P-8) and order dated 7th February, 1992 (Annexure P-10) be stayed.

Anand Chhibbar, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for the State.

Surya Kant, Advocate, for the Respondent No. 3.

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner, who is a member of Scheduled Castes, hails from the State of Himachal Pradesh. Is he entitled to the benefit of reservation in the State of Haryana? This is the short question that arises for consideration in this case. A few facts may be briefly noticed.

(2) The petitioner was appointed as a Clerk-cum-Typist in the State of Haryana on March 19, 1970. On May 22, 1975 he was promoted as an Assistant. *Vide* order dated March 18, 1992 the petitioner was confirmed as an Assistant with effect from January 8, 1979. He was permitted to cross efficiency bar,—*vide* order dated

May 4, 1985 with effect from the due date viz April 1, 1985 on January 24, 1991, the petitioner was promoted as Deputy Superintendent with effect from November 1, 1988. This promotion was challenged by one Mr. K. K. Bhalla in C.W.P. No. 2765 of 1991. This petition was allowed on May 31, 1991. As a consequence, the petitioner was reverted from the post of Deputy Superintendent to that of Assistant. Another post of Deputy Superintendent became available on December 1, 1991. *Vide* order dated December 13, 1991 the petitioner was given the "acting charge of the post of Deputy Superintendent in his own pay scale....." *Vide* order dated February 7, 1992, Babu Lal, respondent No. 3 was ordered to be promoted to the post of Deputy Superintendent and the order dated December 13, 1991 by which the petitioner was given the acting charge of the post was withdrawn. Aggrieved by this action, the petitioner has approached this Court through the present writ petition.

(3) The claim as made out in the writ petition has been controverted in the written statement filed by the official as well as private respondents. Reliance has been placed on certain instructions issued by the Government from time to time by both sides. It is apt to refer to the necessary instructions issued by the State Government with regard to the reservation of posts for members of Scheduled Castes etc. from time to time.

(4) In the joint State of Punjab instructions were issued,—*vide* letter dated September 7, 1963. A question arose as to whether the benefit of reservation could be given even to the members of those Scheduled Castes which were recognised by the State though they were the domiciles of other States. *Vide* letter dated January 20, 1972, the Social Welfare Department conveyed the decision of the Government "that the benefit of reservation as per these instructions *has to be given only to those Scheduled Castes/Backward Classes who are domiciles of Haryana State and this benefit is not to be granted to those who are domiciles of other States.*" (Emphasis supplied). Thereafter,—*vide* letter dated September 15, 1972, it was *inter alia* decided that "so far as the benefit of relaxation in age and fee is concerned, these facilities should be given not only to those persons of Scheduled Castes and Backward Classes, who are domiciles of Haryana, but to those also who are domiciles of the State other than Haryana and belong to those Scheduled Castes which are recognised by the Haryana Government." It was observed that relaxation in age and fee has no relevance with the population of Scheduled Castes in Haryana on the basis of which reservation of posts had been fixed. Copies of these two letters are on the record of this case as Annexures R3/1 and R3/2 with the written statement

of respondent No. 3. In continuation of the letter dated September 15, 1972, referred to above, the Social Welfare Department issued instructions,—*vide* letter dated December 18, 1973 (Annexure P.5) to all Heads of the Departments advising that “the employees of Scheduled Castes/Scheduled Tribes, who are in the service of the Haryana Government, should also be considered as *bona fide* residents of Haryana and they along with their children should be given benefit of reservation in Government service.” Thereafter, the Chief Secretary to Government Haryana issued instructions to the effect that just as the benefit of reservation to the members of Scheduled Castes and Backward Classes is given only to the domiciles of the Haryana State, the benefit of reservation to ex-servicemen and physically handicapped persons should be given only to those “who are domiciles of the Haryana State and not to others.” *Vide* letter dated October 22, 1990 (Annexure R3/3A), it was clarified that “if a person belonging to the other State joins service as a general candidate in Haryana and later on claims the benefit of reservation in promotion on the basis of certificate issued by the other State for a caste which has been declared as reserved by the State of Haryana, such a person cannot claim benefit of reservation for himself on the basis of that certificate. However, his children/dependants can claim the benefit of reservation being dependants of the Haryana Government employees.”

(5) It appears that on the occurrence of the vacancy of Deputy Superintendent, a doubt arose as to whether or not the petitioner was entitled to the benefit of reservation in the matter of promotion. *Vide* letter dated December 18, 1991, a copy of which has been produced as Annexure R. 3/6, clarification was sought by the Engineer-in-Chief from the Chief Secretary. Pointed attention was drawn to the letter dated December 18, 1973, referred to above. This clarification was given.—*vide* letter dated February 5, 1992 (annexure P-8). It was observed that in accordance with the instructions dated January 20, 1972, read with letter dated July 15, 1985 “the benefit of reservation at the time of initial recruitment as well as in the matter of promotions is admissible to the Scheduled Castes and Backward Class candidates belonging to the Haryana State only and not to those belonging to a State other than Haryana.” It was also observed that “the Scheduled Caste and Backward Class persons belonging to a State other than Haryana after joining Haryana Government service cannot be considered as *bona fide* residents of Haryana and hence cannot claim the benefit of reservation for himself. However, the children/dependants of such a person can be given the benefit of reservation since they become domiciles of Haryana.” It is on receipt of this clarification

that the order promoting respondent No. 3 and cancelling the order dated December 13, 1991 was passed.

(6) In the background of the above factual position, the petitioner claims that he has a right to be considered as a member of the Scheduled Caste and given the benefit of reservation. Mr. Anand Chhibber, who has argued the case for the petitioner, contends that having served the State for more than 20 years, the petitioner is a domicile of Haryana and is entitled to the benefit of reservation in accordance with the instructions which were in force on the date of the occurrence of the vacancy. The claim is controverted by Messrs Jaswant Singh and Surya Kant, learned counsel for the respondents.

(7) Learned counsel for the the parties are agreed that the petitioner is 'Chamar' by caste. 'Chamars' are recognised as Scheduled Caste in the State of Himachal Pradesh as well as the State of Haryana. *Vide* letter dated December 18, 1973, the Haryana Government had directed that members of Scheduled Castes "who are in the service of the Haryana Government, should also be considered as *bonafide* residents of Haryana and they along with their children should be *given benefit of reservation in Government service.*" On the basis of this letter, Mr. Chhibber contends vehemently that the petitioner is entitled to the benefit of reservation. On the other hand, Mr. Surya Kant submits that the benefit is only admissible to the domiciles of Haryana State and that in view of the letter dated October 22, 1990 such a person cannot claim the benefit of reservation. Is it so ?

(8) The petitioner may have been born in the State of Himachal Pradesh. He, however, joined service in the State of Haryana in the year 1970. It is reasonable to presume that he has been residing in the State of Haryana since then. By the letter of December 18, 1973 (annexure P.5), employees of the State of Haryana are deemed to be *bona fide* residents and are entitled to the benefit of reservation. These instructions have not been specifically superseded by any subsequent decision of the Government. The letter dated October 22, 1990 does not deal with an identical situation. It cannot be interpreted to mean that the instructions of 1973 have been superseded. It only appears to be a clarification given by the General Administration department to the Financial Commissioner. The exact context and the factual background are not available on the record of the case. From a perusal of the letter dated December 18, 1973 and the facts of this case it appears that the members of Scheduled Castes, who are in the service of the Haryana Government, are entitled to be given the benefit of reservation. This benefit on a plain reading of the letter appears to be admissible in the matter of promotion.

(9) Mr. Surya Kant contended that,—*vide* letter dated July 15, 1985 (annexure R.3/3), the Government had restricted the grant of benefit only to the domiciles of the Haryana State. He submits that this letter should be deemed to be superseding the instructions issued,—*vide* letter dated December 18, 1973. This contention cannot be accepted for two reasons. Firstly, there is nothing in the letter to suggest that the instructions of December 18, 1973 have been superseded. Secondly, the question was being considered only in the context of grant of benefit to ex-servicemen and physically handicapped persons. It was not being examined with regard to the persons who were already in the service of the Haryana State.

(10) Mr. Surya Kant then contended that under Article 341 of the Constitution, the President specified Scheduled Castes “in relation to that State or Union Territory.....” Consequently, he submits that ‘Chamars’ are deemed to be a Scheduled Caste only in relation to the State of Haryana. This is undoubtedly correct. However, (residents of another State on employment in the State of Haryana do not cease to be members of a particular caste to which they actually belong. As in the present case, a ‘Chamar’, who belongs to the category of Scheduled Caste in the State of Himachal Pradesh and is also recognised as such in the State of Haryana, continues to be a member of that class. By virtue of the instructions dated December 18, 1973, he becomes a *bonafide* resident of the State of Haryana and thus entitled to the benefit of reservation.)

(11) Mr. Surya Kant then contends that in view of the clarification given by the Chief Secretary,—*vide* letter dated February 5, 1992, the petitioner cannot be considered as a *bona fide* resident of Haryana. This contention also cannot be accepted. This letter only contains a clarification by the Chief Secretary and is not the decision of the Government. The decision is actually contained in the instructions dated December 18, 1973. The clarification does not amount to a supersession of these instructions.

(12) In view of the above it is held that the petitioner is a member of the Scheduled Caste and is a *bona fide* resident of the Haryana State. He is thus entitled to the benefit of reservation. Accordingly the impugned action of the State and particularly the order dated February 7, 1992, promoting respondent No. 3 and cancelling the order dated December 13, 1991 cannot be sustained. These are consequently quashed. The respondents are directed to consider the petitioner’s claim for promotion with effect from December 13, 1991. In the circumstances of the case, the parties are left to bear their own costs.