6. Some other authorities cited at the Bar had no relevance to the point in issue and, as such these have not been noticed.

7. Shorn of the natural burden, the scales of justce do not at all tilt in favour of the petitioner. The writ Petition is dismissed, but with no order as to costs.

O. Chinnappa Reddy, J.—I agree.

Bhopinder Singh Dhillon, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy, S. C. Mittal and Surinder Singh, JJ.

JAGDISH RAI, ETC.,—*Petitioners.*

versus

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

Civil Writ Petition No. 2149 of 1972.

September 17, 1976.

Constitution of India 1950—*Article* 16—*Reservation of posts in favour of Ex-Servicemen—Whether permissible.*

Held, that Article 16(4) of the Constitution of India is not an exception to Article 16(1) but is illustrative of one of the methods of achieving equality. It is not exhaustive of the classifications necessary and, therefore, permissible for achieving equality and the general principles applicable to situations under Article 14 are equally applicable under Article 16(1). While the best and the most meritorious of those seeking appointment under the State should be selected, it is also equally fair and equitable that a just proportion of the posts should be given to those who, because of a peculiar handicap, may not stand a chance against those not so handicapped. It would be an extension of the principle of Article 16(4) to those that do not fall under Article 16(4). Defence personnel who on account of their service with the Army, the Navy and the Air Force over the years have lost opportunities for entering Government

Service and have also lost contact with ordinary civilian life, may find it extremely difficult, on demobilisation, to compete with civilians for civilian jobs, despite the qualities of discipline, sacrifice, sense of public duty, initiative, loyalty and leadership which they would have undoubtedly acquired as members of the Defence Forces. The State has an undoubted obligation to provide employment to Ex-Servicemen who have faithfully served the interests of the country's security, ready to risk their lives. The State has an obligation to protect them from the competition of civilian applicants against whom they may not stand a chance. Thus the State is justified in classifying them separately as a source of recruitment and reserving posts for them.

(Paras 7 and 10)

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia to the Division Bench on 4th December, 1972, for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain again referred the case to the Full Bench on 16th December, 1975, for final decision. The Full Bench consisting of Hon'ble Mr. Justice O, Chinnappa Reddy, Hon'ble Mr. Justice S. C. Mittal and Hon'ble Mr. Justice Surinder Singh finally decided the case on 17th September, 1976.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, quo warranto, mandamus or any other appropriate writ, order or direction deemed fit and proper in the circumstances of the case thereby quashing whole of the selection made by the said Board and orders of termination of services of the petitioners passed by the Director may very kindly be issued and costs of this writ petition may also be awarded to the petitioners.

And further praying that pending final disposal of this writ petition, the Director (Respondent No. 2) may be directed not to implement orders of termination of services of the petitioners.

R. P. Bali, Advocate, J. L. Gupta, Advocate as Amicus Curiae, *for the petitioners.*

M. M. Punchhi, Advocate for A. G. Haryana, with Suresh Amba, Advocates, *for the Respondents.*

JUDGMENT

O. Chinnappa Reddy, J.—(1) In these two writ petitions, the reservation of 28 per cent of vacancies in the posts of Sub-Inspectors in

the Food and Supplies Department for Ex-Servicemen meaning thereby released Army personnel, is questioned as opposed to Article 16(1) of the Constitution. At our request, Shri Jawahar Lal Gupta argued the case as *amicus curiae* and we are grateful to him for the assistance rendered by him.

(2) Shri Jawahar Lal Gupta contended that Article 16 did not contemplate any reservation of posts except to the extent mentioned in Article 16(4), that Article 16(3) and 16(4) were exhaustive of all permissible classification in regard to matters relating to employment or appointment to any office under the State and that Article 16(1) permitted the laying down of qualifications related to the needs of the posts but not qualifications related to the needs of the individuals offering themselves for appointment to the posts.

(3) At the outset, it is well to be rid of the cobwebs created in the past by the glorification of the Fundamental Rights on account of their assumed 'transcendental' nature and the failure to interpret the Fundamental Rights in the light of the Directive Principles of State Policy and the other Articles of the Constitution enjoining certain obligations on the State. Because Directive Principles were not justiciable, while Fundamental Rights were, it was thought that Directive Principles were of secondary importance as compared with Fundamental Rights. That way of thinking is of the past. It is now realised and asserted without contradiction that Directive Principles occupy a high, if not a higher, place, than Fundamental Rights in the Constitution and that they should invariably be read into the Fundamental Rights. Law attacked on the ground of infringement of Fundamental Rights are now examined to find out if they do not advance one or the other of the Directive Principles or if they are not in discharge of some of the undoubted obligations of the State, constitutional or otherwise, towards its citizens or sections of its citizens, and if they cannot be sustained on such grounds as reasonable restrictions, permissible classifications, etc. A relic of the old way of thinking is the idea that clause (4) of Article 15 and clause (4) of Article 16 are in the nature of exceptions to the Fundamental Rights guaranteed by Articles 15 and 16 of the Constitution. The old idea has now given way to the idea that clause (4) of Article 15 and clause (4) of Article 16 are themselves aimed at achieving the very equality proclaimed and guaranteed by Article 14 and other clauses

of Articles 15 and 16. In *State of Kerala* v. *N. M. Thomas* (1), Ray, C.J., observed:—

> "The rule of equality within Articles 14 and 16(1) will not be violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency..... All legitimate methods are available for equality of opportunity in services under Article 16(1).....*Article* 16(4) *indicates one of the methods of achieving equality embodied in Article* 16(1)."

In the same case, Mathew, J., said:—

> "I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualised in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of the Scheduled Castes and Scheduled Tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, *then Article* 16(4). *is not an exception to Article* 16 (1). *It is only an emphatic way of putting the extent to which equality of opportunity could be carried,* viz,. even up to the point of making reservation.....Article 16 (1) is only a part of a comprehensive scheme to ensure equality in all spheres. It is an instance of the application of the larger concept of equality under the law embodied in Articles 14 and 15. Article 16(1) permits of classification just as Article 14 does."

Krishna Iyer, J., observed:—

> True, it may be loosely said that Article 16(4) is an exception, but, closely examined, *it is an illustration of constitutional sanctified classification*.....The basic question thus is one of social dynamics applied in Article 16(1).....My conclusion is that genius of Articles 14 to 16 consists not in literal equality but in progressive elimination of pronounced inequality."

(1) 1976 (1) S.L.R. 805.

Fazal Ali, J., observed :—

> It is true that there are some authorities of this Court that clause (4) is an exception to Article 16(1) but with due respect I am not in a position to subscribe to this view for reasons I shall give hereafter."

(4) In *State of Kerala* v. *N. M. Thomas,* the Supreme Court considered the question of the validity of a rule and two orders of the Kerala Government by which temporary exemption was granted to members of the Scheduled Castes and Scheduled Tribes from passing certain tests prescribed as necessary for promotion. It was argued by those questioning the rule that Article 16(4) was exhaustive of all permissible classification under Article 16(1) and, therefore, apart from the reservation of posts contemplated by Article 16(4), there could be no other curtailment of the right guaranteed by Article 16(1). It was said that the general principles relating to permissible classification in cases arising under Article 14 had no application to cases arising under Article 16. These arguments were repelled by the Supreme Court. Ray, C.J., observed:—

> "Articles 14, 15 and 16 from part of a string of constitutional guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment."

(5) In order to illustrate the classification permissible under Article 16(1) in the matter of promotion, Ray, C.J., referred to *Govind Dattatray Kelkar* v. *Chief Controller of Imports* (2), *Ganga Ram* v. *Union of India* (3), *Roshan Lal Tandon* v. *Union of India* (4), and *State of Jammu & Kashmir* v. *Triloki Nath Khosa* (5). Later, the learned, Chief Justice observed:—

> "All legitimate methods are available for equality of opportunity in services under Article 16(1). Article 16(1) is

(2) (1967) 2 S.C.R. 29.
(3) (1970) 1 S.C.R. 377.
(4) (1968) 1 S.C.R. 185.
(5) (1974) 1 S.C.R. 771.

affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1). Article 16(1) using the expression "equality" makes it relatable to all matters of employment from appointment through promotion and termination to payment of pension and gratuity. Article 16(1) permits classification on the basis of object and purpose of law or State action except classification involving discrimination prohibited by Article 16(2). Equal protection of laws necessarily involves classification. The validity of the classification must be adjusted with reference to the purpose of law. The classification in the present case is justified because the purpose of classification is to enable members of Scheduled Castes and Tribes to find representation by promotion to a limited extent. From the point of view of time a different treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with efficiency.".

Mathew, J., reiterated the position that Article 16(1) was only a part of a comprehensive scheme to ensure equality in all spheres, that it was an instance of the application of the larger concept of equality under the law embodied in Article 14 and 15 and that it permitted classification just as Article 14 did. He referred to *Jaisinghani* v. *Union of India* (6), *State of Mysore* v. *P. Narasing Rao* (7), and *C. A. Rajendran* v. *Union of India* (8), where the Supreme Court had earlier declared that Articles 14 and 16 formed part of the same code of constitutional guarantees supplementing each other, that Article 16(1) was an instance of the application of general rule of equality laid down in Article 14 and that it should be construed as such.

Krishna Iyer, J., observed:—

"Equal opportunity is a hope, not a menace. If Article 14 admits of reasonable classification, so does Article 16(1) and this Court has held so. In the present case, the economic advancement and promotion of the claims of the grossly

(6) (1967) 2 S.C.R. 703.
(7) (1968) 1 S.C.R. 407.
(8) (1968) 1 S.C.R. 721.

under-represented and pathetically neglected classes, otherwise described as Scheduled Castes and Scheduled Tribes, consistently with the maintenance of administrative efficiency, is the object, constitutionally sanctioned by Articles 46 and 335 and reasonably accommodated in Article 16(1). The differential, so loudly obstrusive is the dismal social milieu of harijans. Certainly this has a rational relation to the object set out above."

(6) The decision in *State of Kerala* v. *N. M. Thomas*, has got rid of the old sterility about which Mathew, J., Krishna Iyer, J., and Fazal Ali, J., hinted and has introduced a new dynamism and a new dimension into the concept of equality and particularly of equality of opportunity. A new chapter may be said to have commenced in the interpretation of the equality clauses of the Constitution. It is no longer necessary to 'apologetically' explain laws aimed at achieving equality as permissible exceptions. It can now be boldly claimed that such laws are necessary incidents of equality.

(7) The legal position, as explained in *State of Kerala* v. *N. M. Thomas*, may now be taken to be settled, that Article 16(4) is not an exception to Article 16(1) but is illustrative of one of the methods of achieving equality, that it is not exhaustive of the classifications necessary and, therefore, permissible for achieving equality and that the general principles applicable to situations under Article 14 are equally applicable under Article 16(1). This completely answers the principal submissions made on behalf of the petitioners.

(8) There still remains the question whether the reservation of posts for ex-Servicemen is a classification within Article 16(1). The sheet-anchor of the learned counsel for the petitioners was **Sukhanandan Thakur** v. **State of Bihar** (9). Ahmad and Ramaswami, JJ., took the view that Article 16(4) was in the nature of an exception to the Fundamental Right guaranteed by Article 16(1), that the framers of the Constitution did not intend any other exception to Article 16(1) and that a special concession shown to displaced persons and political sufferers in the matter of retrenchment was inconsistent with Article 16(1). Ramaswani, J., also observed that he found it difficult to understand how the circumstances that a candidate was a 'political sufferer' or 'displaced person' had any material relation

(9) A.I.R. 1957 Patna 617.

or bearing on the efficiency or proper performance of his duties as a Supply Inspector. Sinha, C.J., who was in a minority, expressed the view that efficiency was not the sole object of State employment. It could be for other purposes as well. It could well be for the purposes mentioned in Articles 39, 41, 46, etc., of the Constitution. The learned Chief Justice said:—

> "It was not disputed before us that displaced persons did suffer from undeserved want by reason of the circumstances which followed in the wake of partition and events thereafter, and we can certainly take judicial notice of those circumstances. Similarly, political sufferers, as explained above, furnish another instance of undeserved want and I do not see any particular reason why the State Government cannot make a separate classification of such persons in order to give them employment or preference in employment under the State. But the cases of displaced persons and political sufferers are cases of undeserved want, and, in my opinion, the State Government can classify them in order to give them public assistance by way of State Government. Such classification is neither unreasonable nor can it be said to have no relation to the object or purpose for which State employment is made."

(9) There is much to be said in favour of the view expressed by the learned Chief Justice. It is in consonance with the views expressed by the Supreme Court in **State of Kerala** v. **N. M. Thomas,** already cited and **Chanchala** v. **State of Mysore** (10). It will be useful to refer to the latter decision at this juncture. Though it was a case where Articles 14 and 15 were considered and not Article 16, it sheds considerable light on the principles involved. One of the questions considered was regarding the validity of setting apart a certain number of seats in Government Medical Colleges for children of political sufferers, Defence Personnel and Ex-Defence Personnel. The Supreme Court first observed that it was not a case of reservation but of laying down sources for selection necessitated by certain over riding considerations, such as obligations towards

(10) 1971 S.C. 1762.

those who served the interest of the country's security and the like. Proceeding to consider whether the classification of children of political sufferers, Defence and Ex-Defence Personnel as a source for selection had a reasonable relation to the object for which the rules for admission were made, the learned Judges observed:—

> "The object of the rules for admission can obviously be to secure a fair and equitable distribution of seats amongst those seeking admission and who are eligible under the University Regulations. Such distribution can be on the principle that admission should be available to the best and the most meritorious. But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who, but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Article 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Article 15(4). It is on such a principle that reservation for children of Defence personnel and Ex-Defence personnel appears to have been upheld. The criteria for such reservation is that those serving in the Defence forces or those who had so served are and were at a disadvantage in giving education to their children since they had to live, while discharging their duties, in difficult places where normally facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of

'political sufferer' not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats."

(10) On the same analogy, it must be said that while the best and the most meritorious of those seeking appointment under the State should be selected, it is also equally fair and equitable that a just proportion of the posts should be given to those who, because of a peculiar handicap, may not stand a chance against those not so handicapped. It would be an extension of the principle of Article 16(4) to those that do not fall under Article 16(4). Defence personnel who on account of their service with the Army, the Navy and the Air Force over the years have lost opportunities for entering Government Service and have also lost contact with ordinary civilian life, may find it extremely difficult, on demobilisation, to compete with civilians for civilian jobs, despite the qualities of discipline, sacrifice, sense of public duty, initiative, loyalty and leadership which they would have undoubtedly acquired as members of the Defence Forces. The State has an undoubted obligation to provide employment to Ex-Servicemen who have faithfully served the interests of the country's security, ready to risk their lives. The State has an obligation to protect them from the competition of civilian applicants against whom they may not stand a chance for reasons already mentioned. The State is, therefore, justified in classifying them separately as a source of recruitment and reserving posts for them. Nor, can it be said that efficiency of service will suffer. Ex-Service personnel are required to possess the same minimum qualifications as others and they came endowed with qualities of discipline, sacrifice, initiative, loyality, sense of public duty, etc., qualities not to scoffed at in public service. And, what does efficiency mean ? As Krishna Iyer, J., points out "Efficiency means, in terms of good Government, not marks in examination only, but responsible and responsive service to the people."

(11) We, therefore, uphold the reservation of posts in favour of Ex-Servicemen. We are happy to note that a learned Judge of this Court has already upheld the reservation in **Daya Ram** v. **State of**

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

S. C. Mittal, J.—I agree.

Surinder Singh, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

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

MR. Y. K. BHATIA,—*Petitioner.*

versus

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

Civil Writ No. 127 of 1976.

September 23, 1976.

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

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

(Para 5)

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