AJIT SINGH AND ORS. A

v.

STATE OF PUNJAB AND ORS.

DECEMBER 8, 1999

[DR. A.S. ANAND, CJ., S.B. MAJMUDAR, G.B. PATTANAIK S.P. KURDUKAR AND M. JAGANNADHA RAO, JJ.] B

Constitution of India, 1950 :

Article 16(4)—Public employment—Power of State to make provision for reservation for backward class of citizens—Held, Article 16(4) is only an enabling provision. C

Ajit Singh II **v.** *State of Punjab,* **[1997] 7 SCC 209, reiterated.**

Indira Sawhney **v.** *Union of India,* **[1992] Suppl. 2 SCR 454;** *M.R. Balaji* **v.** *State of Mysore,* **[1963] Suppl. 1 SCR 439;** *C.A. Rajendran* **v.** *Union of India,* **[1968] 1 SCR 721;** *P& T Scheduled Caste/Tribe Employees Welfare Association (Regd.)* **v.** *Union of India,* **[1998] 4 SCC 147 and** *State Bank of India* **v.** *Scheduled Caste/Tribe Employees Welfare Association,* **1996 4 SCC 119, relied on.** D E

CIVIL APPELLATE JURISDICTION : Review Petition (Civil) Nos. 1504-1506 of 1999.

IN

I.A. Nos. 1-3 of 1997. F

IN

Civil Appeal Nos. 3792-3794 of 1989.

From the Judgment and Order dated 23.8.1989 of the Punjab and Haryana High Court in C.W.P. Nos. 2190/88, 7860-7861 of 1987. G

The following Order of the Court was delivered :

Delay condoned.

 H

A We are of the view that there are no merits in the review applications.

In Ajit Singh II v. *State of Punjab,* [1997] 7 SCC 209, It was stated (at PP. 229-230) relying upon earlier judgments starting from 1963, that Article 16(4) was only an enabling provision and did not impose any constitutional duty nor confer any fundamental right for reservations. The observations at B page 691 by Jeevan Reddy, J. in Indira Sawhney relied upon in the review applications do not deal with the above issue. It was the view of two Constitution Bench Judgments of this Court one of 1963 in M.R. *Balaji* v. *State of Mysore,* [1963] Supp. 1 SCR 439 and another in 1968 in *C.A. Rajendran* v. *Union of India,* [1968] 1 SCR 721 and also two three judgments of this Court C in *P& T Scheduled Caste/Tribe Employees Welfare Association (Regd.)* v. *Union of India,* [1998] 4 SCC 147 and *State Bank of India* v. *Scheduled Caste/ Tribes Employees Welfare Association,* [1996] 4 SCC 1191, that Article 16 (4) was only an enabling provision. The view was nowhere dissented in Indira Sawhney much less at page 691 by Jeevan Reddy, J.

D It appears to us that all the nine Judges in Indira Sawhney were of the same view that Article 16 (4) was not in the nature of a fundamental right and was only an enabling provision. In this connection, reference may be made with advantage to the view of the Jeevan Reddy, J. (at pages 667-735) referring to Subba Rao, J. That Article 16 (4) was a provision conferring a 'power' and referring to Article 16 (1) alone as a guarantee and not to Article 16 (4); to E the view of Sawant, J. (at page 517, para 43 (4), Pandian J. (at page 407, para 168). Thommen, J. (at page 449, para 284), Sahai, J. (at page 580) with whom Kuldip Singh, J. agreed, - all expressly stating that Article 16 (4) was only an enabling provision. Thus, majority of the learned Judges expressly stated that Article 16 (4) was an ''enabling provision''. Merely because the reservation F for backward classes was created as reasonable classification and justified at page 691, that does not detract from the view that Article 16 (4) was only an enabling provision.

For the aforesaid reasons, we find there is no merit in these review petitions which are dismissed.

G

R.P. Review Petitions dismissed.