

Kerala Order on Sch. Caste Staff Upheld

NEW DELHI, Sept. 21.

Preferential representation and treatment for Harijans and other Backward Classes in Government services with due regard to administrative efficiency is a constitutionally permissible object, and does not violate the concept of equality enshrined in the Constitution, the Supreme Court has ruled.

Scheduled Castes and Scheduled Tribes and other Backward Classes are a rational classification recognised by the Constitution, and differential treatment in standards of selection in Government services is, therefore, within the concept of equality under Articles 14 and 16 of the Constitution, a Constitution Bench of the Court, presided over by the Chief Justice, Mr. Justice A. N. Ray said in five-to-two majority decision while allowing an appeal by the Kerala State against a judgment of the State High Court.

In seven separate judgments the Chief Justice and Mr. Justice K. K. Mathew, Mr. Justice M. H. Beg, Mr. Justice V. R. Krishna Iyer and Mr. Justice S. Murtaza Fazal Ali gave the majority view, while Mr. Justice H. R. Khanna and Mr. Justice A. C. Gupta expressed dissenting views favouring dismissal of the State Government appeal.

Setting aside the Kerala High Court judgment of April 19, 1974, the Court by its majority view declared Rule 13 AA of the Kerala State and Subordinate Services Rules 1958, as amended in 1972, exempting Harijans and Backward Classes employees of the State Government from special tests for promotions, to be constitutionally valid.

It also held as valid and constitutional two other orders of the State Government, passed on January 13, 1972 and Jan. 14, 1974 exempting for a period of two years members of Scheduled Castes and Tribes, already in service, from passing the tests (unified and special or departmental tests) for the purpose of their promotions. By its order of Jan. 14, 1974, the State Government had further extended the period of exemption by two years.

These orders were passed by the State Government under Rule 13 AA, which had come into force on January 13, 1972.

The Kerala High Court had struck down Rule 13 AA. The rule was later replaced by the Government by its order of January 13, 1972.

The main dispute between the appellant State Government and the respondents, Mr. N. M. Thomas and others, centred on the promotion of some lower division clerks to the grade of upper division clerks. The respondents' grievance was that some of the clerks who were members of the Scheduled Castes or Tribes were shown preferential treatment in that they had been promoted to the higher grade without having cleared the prescribed test.

They also claimed that these clerks were given extension after extension so as to enable them to pass the test, and that the series of extensions had culminated in the order creating Rule 13 AA which was wholly discriminatory

and violative of Article 13 of the Constitution.

According to the facts of the case, out of 51 vacancies which arose in the category of upper division clerks in the State in 1972, 34 were filled by unqualified Scheduled Castes members, only 17 being given to qualified persons.

The State Government contended before the High Court that the impugned rule and orders were not only legal and valid but also supported a rational classification under Article 16 (1) of the Constitution.

The High Court, however, accepted the pleas of the petitioners (Thomas and others) and held that Rule 13 AA was discriminatory and also beyond the reservation permitted by Clause four of Article 16 relating to equal opportunity in employment to all citizens.

Expressing the majority view of the Bench, the Chief Justice Mr. Justice Ray, in his judgment, held that the basic concept of equality was equality of opportunity for appointment. Preferential treatment for members of Backward Classes with regard to administrative efficiency alone could mean equality of opportunity for all citizens.

"Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits of discrimination with reason and prohibits discrimination without reason. Discrimination with reason means rational classification for differential treatment having nexus to the constitutionally permissible object", he said.—PTI.

The judgment said that our Constitution aimed at equality of status and opportunity for all citizens including those who were socially, economically and educationally backward.

The Chief Justice was of the view that Articles 15(A) and 16(4) of the Constitution brought out the position of Backward Classes to merit equality. Special provisions were made for the advancement of Backward Classes and reservations of appointment and posts for them to secure adequate representation.

"These provisions will bring out the content of equality guaranteed in Articles 14, 15 (1) and 16 (1) of the Constitution, he said.

The Chief Justice also held that a rule in favour of an under developed backward community specifying the basic needs of efficiency of administration would not contravene Articles 14, 16 (1) and 16 (2) of the Constitution.

The impugned rule in the present case, he further held, did not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who were promoted have to acquire the qualification of passing the test. The only relaxation which was done in their case was that they were granted two years more time than others to acquire the qualification.

"Scheduled Castes and Tribes are descriptive of backwardness. It is the aim of our Constitution to bring them up from handicapped position to improvement. If classification is permissible under Article 14, it is equally permissible under Article 16, because both the Articles lay down equality", the Chief Justice said.—PTI.

UK to withhold only Top Secrets

LONDON, Sept. 21.

The British Government and some of its senior security officials are in sharp disagreement over the Government's plan to relax its absolute right to withhold all official information except for top secret or secret defence, budget and Cabinet matters.

The prospect that the British media may soon be granted the power of almost total investigation putting it on par with the U.S. and other open countries has already aroused wide international attention.

The liberalisation of the Government's information policy is sponsored by the Home Secretary, Mr. Roy Jenkins, who wants to revise the antiquated "catch-all" section two of the 1911 Official Secrets Act which restricts media from publishing matter relating to Government departments and civil servants.

Originally intended to protect the nation's vital secrets against foreign spies in the days of Mata Hari, it made an offence of practically any disclosure however trivial which a Government finds politically embarrassing.—UNI.

Chou's Condition Causing Concern

PEKING, Sept. 21.

The health of the Chinese Prime Minister, Mr. Chou En-lai, who has been hospitalised for more than 18 months, has apparently deteriorated and is causing concern among doctors attending on him. Mr. Edward Heath, former British Prime Minister and Conservative Party leader, who is currently visiting Peking, indicated to the press that Mr. Chou had let it be known that he wanted to meet him but that his doctors were opposed.

It is not believed in foreign circles here that this was a "diplomatic" excuse because Mr. Heath has received great attention during his visit. He had an hour-long meeting to-day with Chairman Mao Tse-tung, and yesterday he spent a total of about five hours in the company of the Deputy Premier, Mr. Teng Hsiao-ping.—AFP.

Six Opium Smugglers Held Under MISA

BHATINDA (Punjab), Sept. 21.

The Police have arrested six inter-State opium smugglers under MISA, according to the Senior Superintendent of Police here to-day.—PTI.