Rabindranath Bose and Others

Vs

The Union of India and Others

Writ Petition No. 146 of 1967

(CJI M. Hidayatullah, S. M. Sikri, G.K. Mitter, A.N. Ray, P. Jagmohan Reddy JJ)

09.10.1969

JUDGMENT

SIKRI, J. -

1. Sixteen Officers of the Income-tax Department have filed this petition under article 32 of the Constitution praying for various reliefs on the ground that their rights under Articles 14 and 16 have been infringed. They are all confirmed Assistant Commissioners of Income-tax and Respondents 6 to 39 are also confirmed Assistant Commissioners of Income-tax. Respondents 1 to 5 are the Union of India, Secretary, Ministry of Finance, Central Board of Direct Taxes, Secretary, Ministry of Home Affairs, and the Union Public Service Commission. The practical object of the petition is to gain some seniority so that they can be promoted as Commissioners of Income-tax earlier than the Respondents 6 to 39. The petitioners were all confirmed as Assistant Commissioners in 1959. Apart from Respondents 28, 29 and 30, all other respondents were confirmed in earlier years. In brief, the case of the petitioners is this : The Government in breach of the rules governing the service of Income-tax Officers Class I, Grade II, appointed Respondents 6 to 39. Their initial appointments were irregular and illegal being outside the quota prescribed by Government for regulating recruitment to the service. Not only were they thus illegally absorbed into service but were also given preferential treatment in the matter of seniority in Class I, Grade II itself and for further promotion to higher grades by framing rules which were discriminatory and which made hostile discrimination against Class I direct recruits like the petitioners.

2. It is urged before us that their case is covered by the principle laid down by this Court in the case of S. G. Jaisinghani v. Union of India and Others ((1967) 2 SCR 703). These contentions are controverted by the respondents. The learned Attorney-General further contends that : (1) all acts which have been challenged in this petition happened before the advent of the Constitution and cannot be challenged under Articles 14 and 16 of the Constitution; (2) the petition merits dismissal on the ground that there has been gross delay in bringing the petition; and (3) the relief which has now been claimed would be against the decision in Jaisinghani's case (supra).

3. In order to appreciate the above contentions and the other points raised before us, it is necessary to set out the relevant facts chronologically.

4. Before September 29, 1944, when the re-organisation scheme was launched, the conditions of service and pay-scales of Income-tax Officers were different and the method of recruitment was also different in different provinces. By letter, dated 23-3-43, it was decided that pending the constitution of Class I and Class II Service of Income-tax Officers, the latter of which will include also officers hitherto called Assistant Income-tax Officers, the existing grade of Assistant Income-tax Officers

should be designated as Income-tax Officers, Grade II. There was disparity not only in pay but also in prospects and conditions of service. The Government therefore felt it necessary to re-organise the entire service and to create a Central service and uniform pay-scales for different constituent grades. The main idea was to create Class I cadre Officers Service and to make selection to it from the existing Class II Officers. This re-organisation scheme was formulated in a letter, dated 29-9-44 from the Government of India, addressed to all Commissioners of Income-tax. The Central Service Class I was to consist of Commissioners of Income-tax -

(No. of Posts 8 - 7 permanent and 1 temporary).

Assistant Commissioners of Income-tax :

(No. of Posts 378 - 360 permanent and 18 temporary).

Income-tax Officers Grade I :

(No. of Posts 151 - 125 permanent and 26 temporary).

Income-tax Officers Grade II :

(No. of Posts 183 - 125 permanent and 63 temporary).

Class II was to consist of Income-tax Officers Grade III :

(No. of Posts 83 - 9 permanent and 74 temporary).

Regarding Income-tax Officers Grade I (Class I Service) it was stated that these officers will be appointed by selection from Grade II which will come into being under the new scheme and till the re-organisation is complete from the existing Grade I of Income-tax Officers in Class II Service.

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Regarding Income tax Officers Grade II (Class I Service) - it was provided that -

"2(d) Recruitment to Grade II will be made partly by promotion and partly by direct recruitment. 80 per cent. of the vacancies arising in this Grade will be filled by direct recruitment, via., the Indian Audit and Accounts and Allied Services Examination. The remaining 20 per cent. of vacancies will be filled by promotion on the basis of selection from Grade III (Class II Service) provided that suitable men up to the number required are available for appointment. Any surplus vacancies which can not be filled by promotion for want of suitable candidates will be added to the quota of vacancies to be filled by direct recruitment via the Indian Audit and Accounts etc. Services Examination.

All direct appointment via the Indian Audit and Accounts and Allied Service Examination to Grade II will, during the period of the war, be subject to such general orders as have already been or may hereafter be issued by the Government of India with a view to safeguarding the interest of 'war service' candidates."

5. It is necessary also to set out Para 3 of the letter which is headed - 'General' :

> "The new classification (in so far as it relates to Income Tax Officers, Grade I and II) indicated in Paragraph 1 above will apply to officers who are recruited under the new scheme including those who are selected from the existing Grade I Income Tax Officers, Class II Service. The present Grade I Income Tax Officers in Class II Service, who are not thus selected, and the officers who will be appointed to this grade before the introduction of the new scheme, will remain in Class II service. This service of Income Tax Officers will be ultimately abolished as soon as these officers leave their posts either by substantive promotion to Class I Service or by retirement or through other causes and the Class II Service will essentially consist only of Income-tax Officers, Grade III."

6. We may at this stage consider the question mooted at the Bar whether recruitment to the service under the scheme was to be confined only to direct recruitment through the Examination and promotion from Grade I Class II service. As we read this scheme, it is quite clear that the intention was not to confine recruitment to the service through these sources because from Para 3 'General', which we have reproduced above, it is quite evident that selections were to be made also from the existing Grade I Income-tax Officers Class II Service. This method of recruitment did not come within Para 2 (d) of the Scheme set out above as it was neither direct recruitment through combined competitive examination nor promotion from Class II Grade III Service. Therefore, the statement in the counter-affidavit of Mr. M. G. Thomas, Ministry of Finance, "Recruitment to Grade II of Class I was to be made partly by direct recruitment (through the combined Competitive Examination as also selection from existing Grade I of Class II Service) and partly by promotion on the basis of selection from Class II (Grade III) Service", is quite correct. It is further stated that, "80 per cent. of the vacancies were to be filled by direct recruitment and the remaining 20% were to be filled by promotion by selection from Class II (Grade III) Service" ..... It appears that selection from the existing Grade I of Class II Service was treated as a form of direct recruitment within the quota of 80% mentioned above. This constitution of the New Service was by an executive order and there were no statutory rules governing the service at this stage. On September 29, 1944 the Government wrote to the Federal Public Service Commission to approve of 100 officers considered suitable for selection to the new Class I Service of Income-tax Officers (Grade I). The Government also requested the Commission to recruit for the Class I, Grade II Income-tax Service ten officers on the result of the competitive examination that will be held in October, 1944. Considering that there were 183 posts, permanent and temporary to be filled in by Income-tax Officers Grade II, the number was insignificant. The idea seems to have been to take the officers from existing Grade I of Class II as far as possible as they had experience and the direct recruits would not be able to cope with the work for some years to come. On May 26, 1945, the Government framed rules for recruitment to the Income-tax Officers (Class I, Grade II) service. These were conceded to be statutory rules in Jaisinghani's case (supra). In the opening paragraph, it was stated that these rules were liable to alteration from year to year. Rules 3 and 4 read as follows :

3. The services shall be recruited by the following methods :

> (i) By competitive examination held in India in accordance with Part II of these Rules :
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> (ii) By promotion on the basis of selection from Grade III (Class II Service) in accordance with Part III of these Rules.

4. Subject to the provision of Rule 3, Government shall determine the method or methods to be employed for the purpose of filling any particular vacancies, or such vacancies as may require to be filled during any particular period, and the number of candidates to be recruited by each method.

It is clear that this Service had already been constituted by an order. It is remarkable that Rule 3 did not mention the third method of recruitment which was being followed at that time and which it was intended to follow for some time. It seems to us that the intention was that these rules would come into effect fully only when the service had been completely re-organized, because otherwise we are unable to understand why the third method of recruitment which was being followed, was not mentioned. It may be that at that time sufficient number of men qualified under the other two categories were not available. The Government probably interpreted Rule 4 to mean that the recruitment by the methods mentioned in Rule 3 was not exclusive, and under Rule 4 the Government could decide whether particular vacancies could also be filled by selection from the existing Class II, Grade I service officers. That this was the understanding both of the Government and the Federal Public Service Commission, seems to be quite clear from the correspondence which has been brought to our notice.

7. On 8th November, 1945, the Government wrote to the Federal Public Service Commission that : "in a like manner, it is proposed to continue promotions to the Grade II of Class I also for the next two or three years from amongst those who were in service in the pre-existing Class II, Grade I, on the date of re-organisation even outside the 20% limit fixed for such promotion in the orders regarding re-organisation. The Government feel that this will not interfere with direct recruitment via the examination. It is presumed that the Commission will not have any objection to the proposals in the immediately two preceding paragraphs" ..... This latter clearly shows that the Government was recruiting officers to Grade II of Class I from the pre-existing Class II, Grade I, and they meant to continue this for the next two or three years. The Federal Public Service Commission replied on May 23, 1946 as follows :

> "With reference to Paragraphs 8 and 9 of your letter, dated the 8th November, 1945, I am to say that the Commission will have no objection if during the next two or three years the names of a few more officers are put forward for consideration for promotion to Grades I and II in Class I where special circumstances seem to justify such a course. They suggest, however, that this should be exceptional.
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8. We may mention here that Respondents 31 to 39 were appointed as I.T.Os. Class I, Grade II in 1945, Respondents 11 and 25 in 1946, but the original date of appointment of respondent No. 25 is June 1, 1947. All the petitioners were either appointed I.T.Os. Class I, Grade II in 1946 or 1947. Respondents 6 to 10, 26, 27 and 28 were appointed in 1947.

9. On January 3, 1947, the Government forwarded to the Secretary, Federal Public Service Commission the names of officers then considered suitable for appointment to Class I, Grades I and II. It was further stated that there were a large number of temporary posts in each grade and it may not be fair to limit promotions to the available permanent posts only as that might result in a large number of temporary men who may be eligible for higher scales of pay being kept down.

10. In February, 1949, in discussing the draft scheme for regulating the seniority of Income-tax Officers, Class I, on an All-India basis, the Government explained that "there are still 51 old Class

II, Grade I officers, who have not yet been selected to Class I, as almost all of them have been found unfit at three successive selections. As technically they still continue to hold Class I posts and block promotions of other deserving officers, it is proposed to make a final selection from them and revert those who are not considered fit for retention in Class I to Class II, Grade III posts. These persons would be considered later for promotion to Class I posts along with others against the 20% vacancies reserved for departmental candidates". Thus, it appears that it was in 1949, that it was decided that final selections were to be made from the remaining Class II, Grade I officers by interviewing them to find their fitness for Class I service.

11. Although the appointments, according to the petitioners, were irregular, they do not challenge the validity of the appointments but what they do challenge is the recognition of the date of appointments for the purpose of seniority. In other words, they say that we may treat an officer having been appointed as Class I, Grade II, validly but for the purpose of seniority his appointment should be post-dated to a date when he would have been appointed had the 'quota rule' mentioned in Para 2 (d) of the scheme, dated September 29, 1944, been fully implemented.

12. We may at this stage deal with this particular question. It seems to us that apart from the above limited concession, we cannot at this time declare that the appointments were invalid in any respect. Assuming that these appointments were made contrary to statutory Rules, the petitioners are incompetent to challenge the validity of these appointments for various reasons. Firstly, these appointments were pre-constitution appointments and they cannot be challenged in a petition under Article 32 of the Constitution. Secondly, there has been inordinate delay. A suit to challenge the validity of the appointment would be hopelessly time-barred, and the respondents have acquired various rights since their appointments. Thirdly, in Jaisinghani's case (supra), this Court said that the order in that case" ..... will not affect such Class II officers who have been appointed permanently as Assistant Commissioners of Income Tax". We will presently give our reasons in detail for coming to this conclusion. To resume the narrative, the petitioners completed their probationary periods on different dates in 1949 and were confirmed as I.T.Os. Class I, Grade II, in 1949 and 1950, except petitioner No. 9 Shri D. N. Pande, who was confirmed on December 22, 1951. Most of the respondents had already been confirmed on various dates in 1946, 1947 and 1948.

13. On April 29, 1949 a meeting of the Departmental Promotion Committee took place and the Committee agreed that promotions to Income-tax Officers Class I Service, of officers recruited in 1944 on the results of the I.A. & A.S. and Allied Services examination held in 1943, and on other bases, should be given effect to from the 1st August, 1948. This decision affected Respondents 12 to 24, 29 and 30. On June 14, 1949, representations were made by direct recruits including petitioners Nos. 5, 6, 8, 10 and 12 and respondent No. 28 (Shariff who is a petitioner in W.P. No. 242/67 under Article 32), regarding proposed Seniority Rules.

14. On September 9, 1949, Seniority Rules were framed and a seniority list of Class I, Grade II, Income-tax Officers, as on the 1st January, 1950, was drawn up and circulated by a letter, dated January 24, 1950. It appears that the seniority rules of 1949, had in the meantime been revised and a copy thereof was enclosed with the abovementioned letter, dated January 24, 1950. It was stated in this letter that Government was prepared to consider any representation that they may have to make in regard to the accuracy of the data contained therein, up to the 28th February, 1950, but no representation against the principles for the determination of seniority will be entertained.

15. On October 18, 1951, the Government decided on the recommendation of the U.P.S.C. and in modification of Para 2 (d) of the Finance Department (Central Revenues) letter, dated September

29, 1944, that for a period of five years in the first instance, 66.2/3 per cent. of the vacancies in Class I, Grade II, will be filled by direct recruitment via Combined Competitive Examination and the remaining 33.1/3 per cent. by promotion on the basis of selection from Grade III (Class II Service). This order was held to be statutory by this Court in Jaisinghani's case (supra).

16. On January 1, 1952 all the petitioners were promoted as I.T.Os., Class I, Grade I, and confirmed also as such on the same date. In February 1952, a committee met for four days to consider the Rules governing the seniority of Income-tax Officers, Class I, Grade II and representations received against the draft seniority list. They made alterations in the seniority rules and in one of these meetings, it was decided :

> "As regards the representations made by some of this batch of direct recruits regarding the date of approval by the Union Public Service Commission of the 1948 batch of promotees, the position is that four of them (Serial Nos. 67 to 70) were actually promoted on the recommendations of the Departmental Promotion Committee held on July 21, 1948. Fifteen others (Serial Nos. 72 to 86) were promoted on the recommendations of the Departmental Promotion Committee held on April 29, 1949, but the records show that the meeting was originally convened for September 6, 1948 and the agenda, etc., had been circulated in advance of this date. The meeting had, however, to be postponed several times due to the personal inconvenience of the members of the U.P.S.C. and of the Central Board of Revenue. In these special circumstances, it was considered that the proper thing would be to treat the recommendations of this Departmental Promotion Committee as if it had actually been held in September 1948. The result is that both batches of promotees of 1948, will remain senior to the direct recruits from the 1945 Examination who joined in 1946."

17. In the serial Nos. 72 to 86 mentioned above, exist the names of the present Respondents 12 to 24 and Respondents 29 and 30. It is contended before us that this decision was arbitrary and not warranted by any rules or principles. It is further contended that the decision was made in 1952 and therefore it is liable to be challenged in a petition under Article 32 of the Constitution.

18. On the material on record it is not possible to say that this decision was actually taken in 1952 and not on April 29, 1949, or thereabout when the Departmental Promotion Committee met and the list was prepared on 24th January, 1950. The fact is that the seniority of the respondents (Serial Nos. 72 to 86) seems to have been fixed on the basis that the Departmental Promotion Committee meeting book place on September 6, 1948.

We may here reproduce the relevant Seniority rules made in 1949, 1950 and 1952 :

Rules regulating Seniority of Class I, Grade II, Income-tax Officers.

Rules 1(f), 1(i) and 1(ii) remain the same in the three years and read thus :

> "1 (f) The seniority of direct recruits recruited on the results of the examinations held by the F.P.S.C. in 1944, and subsequent years shall be reckoned as follows :
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> (i) Direct recruits of an earlier examination shall rank above those recruited from a subsequent examination.

(ii) The Direct recruits of any one examination shall rank inter se in accordance with the ranks obtained by them at that examination.

There was a change in rule (iii), and the three different versions are reproduced below :

As on September 9, 1950 :

(iii) The promotees who have been certified by the Commission in any calendar year shall be senior to all direct recruits who complete their probation during that year or after and are confirmed with effect from a date on that year or after.

As on January 24, 1950 :

(iii) The promotees who have been certified by the Commission in any calendar year shall be senior to all direct recruits who complete their probation during that year or after and are confirmed with effect from a date in that year or after.

Provided that a person initially recruited as Class II Income-tax Officer, but subsequently appointed to Class I on the results of a competitive examination conducted by the Federal Public Service Commission shall, if he has passed the departmental examination held before his appointment to Class I Service, be deemed to be a promotee for the purpose of seniority.

As on September 5, 1952 :

(iii) Officers promoted in accordance with the recommendation of the Departmental Promotion Committee before the next meeting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the result of the examinations held by the Union Public Service Commission during the Calendar year in which the Departmental Promotion Committee met and the three previous years.

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19. On August 1, 1953, a revised seniority list was issued. In the meantime, the I.R.S. Association objected to the weightage principles and suggested changes in it and also desired a revision of the seniority list to correct the disadvantage due to excess promotions.

20. Various representations were made by individual direct recruits as well as the Indian Revenue Service (Income-tax) Association. The case of the Government, is that these representations were not acceptable because in fact there were no excess promotions during the period 1945-1950.

21. In 1955 and 1956, the petitioners were promoted as Assistant Commissioners on different dates. Representations continued to be made in 1954, 1955, 1956, 1958, 1959. Not only were the representations made but an interview with the Finance Minister also took place in 1960. In spite of the Government rejecting the representations, fresh representations continued to be made.

22. On 25-4-62 Jaisinghani filed a writ petition in the High Court and the High Court delivered its judgment on 11.3.64. Against this decision Jaisinghani filed an appeal to this Court. A writ petition was filed by Joshi in the Supreme Court and this Court delivered its judgment in Jaisinghani's

Appeal and Joshi's writ petition on 22.2.67, and the present writ petition was filed in July 1967.

23. It seems to us that there is force in the preliminary points raised by the Attorney-General, and it is not necessary to decide the various points raised by the petitioners. It is settled law that the Constitution has no retrospective operation.

24. In Pannalal Binjraj v. Union of India. (1957 SCR 233, 266) Bhagwati, J., speaking for the Court says :

> "It is settled that Article 13 of the Constitution has no retrospective effect and if, therefore, any action was taken before the commencement of the provisions of any law which was a valid law at the time when such action was taken, such action cannot be challenged and the law under which such action was taken cannot be questioned as unconstitutional and void on the score of its infringing the fundamental rights enshrined in Part III of the Constitution (See Keshavan Madhava Menon v. The State of Bombay)."

25. The decision of this Court in Shanti Sarup v. Union of India and Others (AIR 1955 SC 624) is distinguishable. In that case the facts were that the Government of U.P., passed an order purporting to be under Section 3(f), U.P. Industrial Disputes Act, 1947, by which they appointed one of the partners of the firm as 'authorised controller' of the undertaking. In 1952, the Union of India passed an order purporting to be made under Section 3(4), of Essential Supplies (Temporary Powers) Act, 1946, by which the Central Government appointed the same person, as an authorised controller under the provisions of that section and directed him to run the said undertaking to the exclusion of all the other partners. The petitioner before the Court under Article 32 contended that both the orders were illegal and conflicted with the fundamental rights of the petitioner under Article 13(1) of the Constitution. The Attorney-General appearing for the Central Government conceded before the Court that the impugned orders did not come within the purview of and were not warranted by the provisions of the Acts, under which they purported to have been passed. The only point he took was that the petitioner could not come before the Court under Article 32 of the Constitution inasmuch as there was no fundamental right in existence when the first order of the U.P. Government was passed in July, 1949 and no fresh act of dispossession had taken place since the Constitution came into force. This Court repelled the contention observing that in the first place, the order against which this petition was primarily directed was the order of the Central Government passed in October, 1952 and whether or not the earlier order of the U.P. Government was formally withdrawn, it was this later order upon which the Respondent 3 based his right to retain possession of the properties. The order of the Central Government must, therefore, be deemed to have deprived the petitioner of his property within the meaning of Article 31 of the Constitution as construed by this Court ..... It was further observed :

> "But even assuming that the deprivation took place earlier and at a time when the Constitution had not come into force, the order affecting come into conflict with the fundamental rights of the petitioner as soon as the Constitution came into force and became void on and from that date under Article 13(1) of the Constitution."

It is this passage which is strongly relied on by the learned Counsel for the petitioners.

26. In our view this passage has no application to the facts of this case. In a number of subsequent decisions of this Court the passage has been held to be applicable only to the facts in that case.

27. In Sri Jagadguru Kari Basava Rajendra Swami of Gavimutt v. Commissioner of Hindu Religious Charitable Endowments Hyderabad (1964 (8) SCR 252), Gajendragadkar, C.J., observed thus regarding the aforesaid passage :

> "With respect, we are not prepared to hold that these observations were intended to lay down an unqualified proposition of law that even if a citizen was deprived of his fundamental rights by a valid scheme framed under a valid law at a time when the Constitution was not in force, the mere fact that such a scheme would continue to operate even after the 26th January, 1950, would expose it to the risk of having to face a challenge under Article 19. If the broad and unqualified proposition for which Mr. Sastri contends is accepted as true, then it would virtually make the material provisions of the Constitution in respect of fundamental rights retrospective in operation."

28. In Guru Datta Sharma v. State of Bihar (1962 (2) SCR 292) Shanti Sarup's case (supra) was distinguished in the following words :

> "We are unable to construe these observations as affording any assistance to the appellant ..... We have held that the legislation under which the appellant's rights were extinguished, subject to his claim for compensation, was a valid law. It would therefore follow that the appellant could have no rights which could survive the Constitution so as to enable him to invoke the protection of Part III thereof."

29. In Guru Datta Sharma v. State of Bihar and another (AIR 1961 SC 1684, 1698), Shanti Sarup's case (supra) was again distinguished. Ayyangar, J., speaking for the Court observed :

> "We are unable to construe these observations as affording any assistance to the appellant ..... We have held that the legislation under which the appellant's rights were extinguished, subject to his claim for compensation, was a valid law. It would, therefore, follow that the appellant could have no rights which could survive the Constitution so as to enable him to invoke the protection of Part III thereof. On this point also we must hold against the appellant."

30. It seems to us that the petitioners cannot complain of the breach of Articles 14 and 16 of the Constitution in respect of acts done before the Constitution came into force. These acts in this case were : (1) appointments of the respondents to Income Tax Officers Class I, Grade II Service; (2) Seniority List as existing on January 1, 1950; and (3) the Seniority Rules of 1949 and 1950, in so far as they had effect up to January 26, 1950. It will be recalled that the first seniority list was prepared as on January 1, 1950 and even if the seniority list was finally settled after the Constitution came into force, the Rules to be applied were the Seniority Rules of 1949 and 1950. In other words, if the list had been finally settled on January 1, 1950, it is clear that no appeal could be made to Article 14 and 16 of the Constitution. The fact that the List was prepared after the Constitution came into force would not enable the petitioners to appeal to Articles 14 and 16. The position is, however, different in so far as changes were made in the Seniority List as a result of change in the 1952 Seniority Rules. These changes were post-constitution and if they are hit by Article 14 and Article 16 of the Constitution, the petitioners would have the right to complain of the breach of their fundamental rights under these Articles.

31. But in so far as the attack is based on the 1952 Seniority Rules, it must fail an another ground.

The ground being that this petition under Article 32 of the Constitution has been brought about fifteen years after the 1952 Rules were promulgated and effect given to them in the Seniority List prepared on August 1, 1953. Learned Counsel for the petitioners says that this Court has no discretion and cannot dismiss the petition under Article 32 on the ground that it has been brought after inordinate delay. We are unable to accept this contention. This Court by majority in M/s. Tilokchand Moti Chand's and Others v. H. B. Munshi and Others (1969 (1) SCC 110) held that delay can be fatal in certain circumstances. We may mention that in Laxmanappa Hanumantappa Jamkhandi v. The Union of India Another, (1955 SCR 769) Mahajan, C.J., observed as follows :

> "From the facts stated above it is plain that the proceedings taken under the impugned Act XXX of 1947 concluded so far as the Investigation Commission is concerned in September, 1952 more than two years before this petition was presented in this Court. The assessment orders under the Income-tax Act itself were made against the petitioner in November, 1953.
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> In these circumstances, we are of the opinion that he is entitled to no relief under the provisions of Article 32 of the Constitution. It was held by this Court in Ramjilal v. Income-tax Officer, Mohindergarh that as there is a special provision in Article 265 of the Constitution that no tax shall be levied or collected except by authority of law, clause (1) of Article 31 must therefore be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax, and inasmuch as the right conferred by Article 265 is not a right conferred by Part III of the Constitution, it could not be enforced under article 32. In view of this decision it has to be held that the petition under Article 32 is not maintainable in the situation that has arisen and that even otherwise in the peculiar circumstances that have arisen, it would not be just and proper to direct the issue of any of the writs the issue of which is discretionary with the Court."

32. The learned Counsel for the petitioners strongly urges that the decision of this Court in M/s. Tilokchand Motichand's case (supra) needs review. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.

33. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. It was on this ground that this Court in Jaisinghani's case observed that the order in that case would not affect Class II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments and promotions made after 1950. In this case, we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class II officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent

Assistant Commissioners of Income-tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone.

34. Learned Counsel for the petitioners, however, says that there has been no undue delay. He says that the representations were being received by the Government all the time. But there is limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay. Learned Counsel for the petitioners says that the petitioners were under the impression that the Departmental Promotion Committee had held a meeting in 1948 and not on April 29, 1949, and the real true facts came to be known in 1961 when the Government mentioned these facts in their letter, dated December 28, 1961.

35. We are unable to accept this explanation. This fact has been mentioned in the minutes of the meeting of the Committee which met in February 1952, and we are unable to believe that the petitioners did not come to know all these facts till 1961. But even assuming that the petitioners came to know all these facts only in December, 1961 even then there has been inordinate delay in presenting the present petition. The fact that Jaisinghani's case was pending before the High Court and later in this Court is also, no excuse for the delay in presenting the present petition. In the result, the petition fails and is dismissed. There will be no order as to costs.

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