

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(113)

CWP No. 2719 of 2020

Date of Decision : 03.02.2020

Tilak Raj Singh and others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Karambir Singh Kahlon, Advocate for the petitioners.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that the claim of the petitioner for the grant of an increment for not participating in the strike on 08.02.1978 has been wrongly declined on the ground that the said benefit was granted only to the regular employees and not the employees, who were working on temporary, officiating or ad-hoc basis. The said claim of the petitioner was rejected vide order dated 08.08.2019 (Annexure P-5), which is under challenge in the present writ petition.

The grant of the increment for not participating in the strike on 08.02.1978 to the temporary/officiating/ad-hoc employees is no longer *res integra*. Hon'ble Supreme Court of India while deciding Civil Appeal No. 3487-3492 of 2004 titled as ***Surinder Singh Vs. State of Punjab and others***, on 12.02.2015 categorically held that the benefit of pre-mature

increment for not participating in strike on 08.02.1978 is not available to an employee, who was working on temporary or ad-hoc basis. The relevant paragraph of the judgment of the Hon'ble Supreme Court of India is as under:-

“7. Having said that, we think it appropriate to refer to the second principle that has been laid down by the full Bench of the High Court in paragraph 18 of the said judgment. It reads as follows: -

“18. So far as the point raised by the learned counsel for the petitioner that those adhoc employees who had not been regularized by February 8, 1978 were also granted the benefit of premature increment though they might have been regularized later on but w.e.f. date prior to or up to February 8, 1978, and therefore, the petitioners who were also regularized though much after February 8, 1978, should not be discriminated against, we find no force in this argument. Those adhoc employees who were liable to be regularized on or before February 8, 1978, but for no fault of their no order had been passed were held entitled to the benefit by the Government as if in fact they were regular employees as on February 8, 1978. In the words, the benefit was only been given of premature increment to regular or virtually regular employees who were there as such on February 8, 1978.

8. The aforesaid paragraph carves out situation that if an employee is regularized at a later stage but with effect from the date when the strike took place, he will be entitled to the benefit of premature increment. The facts are not clear in this regard and therefore we would like to competent authority of the State Government to scrutinize the cases of each of the respondents in the backdrop of Para 18 of the Full Bench which

we have reproduced hereinabove within a period of three months and communicate to them.”

Thereafter, the respondent-department rejected the same claim of a large number of employees by passing appropriate speaking orders, which were challenged before this Court and this Court while deciding CWP No. 14898 of 2019 titled as ***Ashok Kumar and others Vs. State of Punjab and another*** and other connected writ petitions, has already upheld a similar order, where the benefit of pre-mature increment was denied to the similarly situated employees. While deciding the said writ petitions, the argument that similarly situated personnels have already been allowed the benefit, has been noticed and rejected. The relevant paragraph of the judgment in ***Ashok Kumar's case (supra)*** is as under:-

“Learned counsel for the petitioners further argues that not only the benefit of one premature increment has been extended to the respondents in Civil Appeal No.3487-3492- of 2004, but in case of CWP No.1863 of 1993 titled as ‘Amarjit Kaur and others Vs. State of Punjab and others’, decided on 03.10.2003, the benefit of grant of increment for not participating in the strike has been extended in the year 2018 and therefore, once the benefit has been extended to similarly a situated employee in 2018, the denial of the same by the respondents by placing reliance upon the order passed by the Hon’ble Supreme Court in Civil Appeals No.3487-3492 of 2004 is totally discriminatory. It is a matter of fact that CWP No.1863 of 1993 titled as ‘Amarjit Kaur and others Vs. State of Punjab and others’, was allowed by this Court on 03.10.2013.

Counsel for the respondents states that once an order in the year 2013 had already become final as no SLP was preferred against the same, the respondents had no option, but to implement the same, but in the present case, the benefit cannot be

extended to the petitioners in the year 2019, when the Hon'ble Supreme Court has already passed an order declining the same relief to the similarly situated persons as the petitioners.

The reliance, which is being placed by learned counsel for the petitioners for the grant of benefit to the petitioners in view of decision rendered in CWP No.1863 of 1993, will not come to the rescue of the petitioners for the grant of benefit as the order was passed by this Court much prior to the decision of Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015. Once the said decision was passed by this Court and the judgment intra party had become final, the respondents had no option but to implement the same, but keeping in view the subsequent facts, especially that the petitioners were not before this Court prior to the year 2019 and had kept quiet for a period of about 40 years, they were to be governed by the settled principle of law, which has been settled by the highest Court of Law as it exist today. The position of law, in respect of the claim of the petitioners in their writ petitions, is that the Hon'ble Supreme Court of India has already held by a detailed order that the benefit of one premature increment cannot be granted to the Ad-hoc employees, who were working on Ad-hoc basis on the date of the strike and therefore, the grant of benefit to the petitioners in CWP No.1863 of 1993 keeping in view the order passed by this Court, which is prior to the date of the passing of the order by the Hon'ble Supreme Court of India cannot also come to the rescue of the petitioners for the grant of benefit of increment for not participating in strike.

Even otherwise, even grant of benefit of one increment to the petitioners in Amarjit Kaur's case (supra) in the year 2018 will not give a right to the petitioner to claim the same on the basis of discrimination. Discrimination can only be claimed, in case there is a right. In the absence of any right to claim the benefit, the same cannot be claimed, even if, the said benefit has been wrongly extended to anyone else. There is no negative

*discrimination, which is available so as to claim a benefit, without there being any right existing in the claimant. Granting a benefit to a claimant without there being any right to claim the same, but on the ground that said benefit has been extended to another though contrary to law, will be amounting to perpetuating the illegality further, which the Courts cannot do. Hon'ble Supreme Court of India in CA No.7295-2019 titled as **'State of Odisha and another Vs. Anup Kumar Senapati and another, 2019(3) ESC 835, decided on 16.09.2019**, has held that there is no negative equality and it is only in case, a person has right, he/she can claim equality and in the absence of any right, no equality/discrimination can be claimed by the person. Relevant paragraph of the judgment is as under:-*

“It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of 1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the -25-right does not exist, negative equality when the right does not exist, cannot be claimed. In Basawaraj and another Vs. Special Land Acquisition Officer, (2013) 14 SCC 81, it was held thus:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an

earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Anand Buttons Ltd. V. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla V. State of M.P., (2006) 3 SCC 581 and Fuljit Kaur V. State of Punjab, (2010) 11 SCC 455.)"

In Chaman Lal v. State of Punjab and others, (2014) 15 SCC 715, it was observed as under:-

"16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in Basawaraj V. Land Acquisition Officer, (2013) 14 SCC 81 considered this issue and held as under:- (SCC p. 85, para 8)

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which

cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Anand Buttons Ltd. V. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581 and Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455.)"

In Fuljit Kaur v. State of Punjab and others, (2010) 11 SCC 455, it was observed thus:

"11. The respondent cannot claim parity with D.S. Laungia v. State of Punjab, AIR 1993 P & H 54, in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide Coromandel

Fertilizers Ltd. V. Union of India, 1984 Supp SCC 457, Panchi Devi v. State of Rajasthan, (2009) 2 SCC 589 and Shanti Sports Club v. Union of India, (2009) 15 SCC 705)".

In Doiwala Sehkari Shram Samiti Ltd. v. State of Uttaranchal and others, (2007) 11 SCC 641, this Court in the context of negative equality observed thus:

"28. This Court in Union of India v. International Trading Co. has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be -27-setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

In Bondu Ramaswamy and others v. Bangalore Development Authority and others, (2010) 7 SCC 129, this Court observed thus:

"146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the rules or scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where

large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if, on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

In Kulwinder Pal Singh and another v. State of Punjab and others, (2016) 6 SCC 532, this Court while relying upon State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330, observed as under:

"16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities.

In State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330 it was held as under (SCC p. 337, para 15)

"15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P., (1996) 7 SCC 426; Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35; State of Haryana v. Ram Kumar Mann, (1997) -28-3 SCC 321; Faridabad CT Scan Centrev. DG, Health Services, (1997) 7 SCC 752; Jalandhar Improvement Trust V. Sampuran Singh, (1999) 3 SCC 494; State of Punjab v. Rajeev Sarwarl, (1999) 9 SCC 240; Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548; Union of India v. International Trading Co., (2003) 5 SCC 437 and Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority, (2006) 2 SCC 604.)"

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

In Rajasthan State Industrial Development & Investment

Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013) 5 SCC 427, this Court held as under:

"19. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Vide Sneh Prabha v. State of U.P., (1996) 7 SCC 426, Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548, State of W.B. v. Debasish Mukherjee, (2011) 14 SCC 187 and Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433.]"

In Anup Das and others v. State of Assam and others, (2012) 5 SCC 559, this Court observed as under:

"19. In a recent decision rendered by this Court in State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330, this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of -29-the Constitution does not envisage negative equality and if the State

had committed a mistake, it cannot be forced to perpetuate the said mistake."

In State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436, it was observed:

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Yogesh Kumar v. Govt. of NCT of Delhi, (2003) 3 SCC 548, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581, Krishan Bhatt v. State of J&K, (2008) 9 SCC 24, State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65 and Union of India v. Kartick Chandra Mondal, (2010) 2 SCC 422)"

31. It is apparent on consideration of Paragraph 4 of order of 2004 that only saving of the right is to receive the block grant and only in case grant in aid had been received on or before the repeal of the Order of 2004, it shall not be affected and the Order of 1994 shall continue only for that purpose and no other rights are saved. Thus, we approve the decision of the High Court in Lok Nath Behera (supra) on the aforesaid aspect for the aforesaid reasons mentioned by us."

A bare perusal of the above would show that after discussing the law on the issue, Hon'ble Supreme Court of India has held that unless, there is a right of an employee to claim benefit, the same cannot be claimed on the basis of discrimination. In Anup Kumar's case (supra) the benefit, which was being claimed was extended to others by the Court and thereafter there was a divergent opinion, according to which, benefit, which was being claimed, was contrary to the settled principle of law and the Hon'ble Supreme Court of India held that once there is no right to claim benefit, the same cannot

be granted on the basis of discrimination.

In the present case, keeping in view order passed by the Hon'ble Supreme Court of India on 12.2.2015 in CA-3487-3492-2004, petitioners do not have right to claim benefit of increment for not participating in strike and order passed by the Hon'ble Supreme Court of India is a law and, therefore, petitioners are claiming the benefit of increment, which is contrary to the law settled by Hon'ble Supreme Court of India, which is impermissible, even, on the ground of discrimination. Hence, claim of the petitioners has rightly been rejected by the respondents by the impugned order.

This Court finds no infirmity in declining of the relief to the present petitioners keeping in view the orders passed by the Hon'ble Supreme Court of India in Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015 as well as in SLP No.3874 of 2009, decided on 16.08.2017.”

Learned counsel for the petitioners has not been able to show that the claim of the petitioners is any way different than as raised before the Hon'ble Supreme Court of India in ***Surinder Singh's case (supra)*** or before this Court in ***Ashok Kumar's case (supra)***. That being so, no interference is called for with the order dated 08.08.2019 (Annexure P-5) passed by the respondents declining the claim of the grant of one increment for not participating in the strike held on 08.02.1978 being a temporary employee.

Dismissed.

February 03, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes
Whether reportable? Yes