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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-1476-2018

Date of Decision: 21.03.2022

Avtar Singh and others

..... Petitioners

Versus

Director General of Police, Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh K. Dadwal, Advocate,
for the petitioners.

Mr. Navdeep Chhabra, DAG, Punjab.

(Through Video Conference)

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for the grant of benefit of the service, which the petitioners have rendered during the Second National Emergency from 03.12.1971 to 25.03.1977 to be taken as qualifying service for computing the pensionary benefits, keeping in view the order passed by the Division Bench of this Court in ***CWP No.17661 of 2013*** titled as “***Rajinder Singh Vs. State of Punjab and others***” decided on 13.11.2014.

Learned counsel for the petitioners submits that the petitioners have worked in the Indian Army during the Second National Emergency. The petitioners are entitled for computing the period spent by them with the Army from 03.12.1971 to 25.03.1977 as qualifying service, keeping in view the Section 8-B of the Punjab Recruitment of Ex-Servicemen (First Amendment) Rule, 2009 (hereinafter referred to as “the 2009 Rules”). Learned counsel for the petitioner

further submits that the case of the petitioners is squarely covered for the grant of said benefit.

On the last date of hearing, the following order was passed:-

“Learned counsel for the petitioner very fairly admits that petitioners are getting pension from Army, which also includes period of second emergency.

Learned counsel for the petitioners prays for an adjournment so as to enable him to place on record the details of the employees, who have been granted benefit of counting the period of military service towards pension despite the fact that they are getting Army pension as well.

Adjourned to 26.03.2020.”

Learned State counsel on the other hand submits that the claim of the petitioners for the grant of benefit is to be considered under the Rules governing the said aspects and Rule 8 of 2009 Rules, clearly debarred the petitioners from claiming the said benefit as the petitioners are already getting the pension for the said period from Army.

I have heard the learned counsel for the parties and have gone through the records with their able assistance.

For the grant of benefit, being claimed by the petitioners, the Rules governing the said aspect have been taken into consideration. It is a conceded position that period spent by an employee with the Army during the emergency period for computing the pension is covered by 2009 Rules. Rule 8 of 2009 Rules is as under:-

“2.In the Punjab Recruitment of Ex.servicemen Rule 1982 after rule 8A, the following rule shall be inserted, namely:-

“8-B. Increments and pension-Period of Military Service

rendered during the second National Emergency from 3rd December, 1971 to 25th March, 1977, shall count for increments and pension as under:

(a). INCREMENTS- The increments for the aforesaid service shall be paid to those persons only, who joined (sic) and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will on account of his proportion, selection, new recruitment or revision of pay scale or otherwise, and

(b). PENSION- the period of military service, referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions, namely:-

(i). the person concerned should not have earned a pension under military rules in respect of the military service in question.

(ii). Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the Government; and

(iii). The period, if any, between the date of discharge from military service and the date of appointment to any service of post under the Government, shall count for pension; provided such period does not exceed one year. Any period exceeding one year, but not exceeding three years, may also be allowed to count for pension in exceptional cases as per orders of the Government.”

A bare perusal of the above Rule would show that to become eligible for the grant of benefit under 2009 amendment, an employee should not have earned a pension under the Military Rules in respect of the military service in question. In the present case, it was conceded before this Court on the last date of

hearing that the petitioners are getting pension for the said period from the Army, and therefore, keeping in view the said fact, the petitioners cannot claim the said benefit, being ineligible under Rules. Grant of relief being claimed in this petition would result in granting the pension to the petitioner twice for the same period, which is impermissible.

As far as the question of discrimination is concerned, there is no negative discrimination. If a person has wrongly been granted certain benefit, the same cannot be claimed by alleging the discrimination. It is a settled principle of law that grant of a benefit to an ineligible person wrongly, does not create a right upon the others to claim the same. Further, allowing the plea of the petitioners on the basis of discrimination, will further perpetuate illegality, which is not permissible to be done by the Court of Law.

As per the settled principle of law settled by the Hon'ble Supreme Court while deciding ***Civil Appeal No.2273 of 2011*** titled as “**Chaman Lal Vs. State of Punjab and others**” decided on 16.05.2014 held that if a wrong benefit has been conferred upon someone inadvertently or otherwise, the same cannot be made a ground to grant similar relief to others. The relevant paragraph of the said judgment is as under:-

*15. 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 & Anr. v. The Spl. Land Acquisition Officer, 2014(1) RCR (Civil) 603 : AIR 2014 Supreme Court 746** considered this issue and held as under:*

“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 Administration & Anr. v. Jagjit Singh & Anr., 1995(2) R.R.R. 291 : AIR 1995 Supreme Court 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., 2005 (1) RCR (Civil) 224 : AIR 2005 Supreme Court 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 Supreme Court 898; and Fuljit Kaur v. State of Punjab, 2010(3) RCR (Civil) 322 : 2010(3) (R.A.J) 553 : AIR 2010 Supreme Court 1937).***

Once again, while deciding **Civil Appeal No.7295 of 2019** titled as **“State of Odisha and another Vs. Anup Kumar Senapati and another”** decided on 16.09.2019, the Hon'ble Supreme Court of India again held that there is no concept of negative equality under Article 14 of the Constitution, it is only in case,

the person has a right that he has to be treated equally, but where right is not available, a person cannot claim rights to be treated equally. The relevant paragraph of the said judgment is as under:-

*30. 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 right does not exist, negative equality when the right does not exist, cannot be claimed. In **Basawaraj and another v. Special Land Acquisition Officer, (2013) 14 SCC 81**, it was held thus:*

“8. It is 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

similar 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 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 vs. 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 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 similarly wrong order. A wrong order/decision in favour of any particular party does not entitled 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. Longia v. State of Punjab, AIR 1993 P&H 54, in view of the settled legal proposition 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 Samvida 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 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 strongly, 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 or 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) 3 SCC 321; Faridabad CT Scan Centre v. DG, Health Services, (1997) 7 SCC 752; Jalandhar Improvement Trust v. Sampuran Singh, (1993) 3 SCC 494; State of Punjab v. Rajeev Sarwal, (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 others 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 on 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 Chattisgarh**, (2012) 7 SCC 433.]”*

In Arup 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 if 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 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. Kartik Chandra Mondal, (2010) 2 SCC 422)”.

Keeping in view the above, the claim being raised by the petitioner by placing reliance upon the grant of benefit upon others without establishing his own right, cannot be allowed, being not admissible in law.

Keeping in view facts and law stated hereinbefore, no ground is made out to grant the petitioners the benefit as being claimed in the present petition.

Dismissed.

21.03.2022

Bhumika

(HARSIMRAN SINGH SETHI)

JUDGE

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| 1. Whether speaking/reasoned : | Yes |
| 2. Whether reportable : | Yes |