

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

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2024:PHHC:043290-DB

LPA-817-2024

Date of Decision: 01.04.2024

Banwari Lal and others

.....Appellant(s)

Versus

State of Haryana and another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Chirag Kundu, Advocate,
for the appellants.

Mr. Deepak Balyan, Addl. A.G., Haryana.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. Consideration in the present letters patent appeal is to the order dated 23.01.2024 passed by the learned Single Judge in CWP-20582-2020, Banwari Lal and others vs. State of Haryana and another whereby, the learned Single Judge has declined to grant the benefit of higher grade pay of Rs.10,000/- instead of Rs.8,800/-, which was drawn by a similarly situated employee namely Narsher Singh. On account of the fact that an illegality as such was committed in one case, the learned Single Judge also directed the State to consider as how the same was done and also opinion of the concerned parties should be taken. It was noticed by the learned Single Judge that the Rules would govern the grant of the higher grade pay and in the absence of any such Rule, the same could not be done.

2. It is also pertinent to notice that in the present case, the appellants herein had retired from service and only on account of the illegality which had been committed by the State in case of another employee, they had filed the writ petitions after 6-8 years, which was also objected to by the State as such on the ground that the writ petition was barred having been filed in the year 2020 and the

retirement having been attained in the years 2012 and 2015. The post as such held was of Director Prosecution and the justification given by the State was only that it was on account of a personal measure after assessing the work of Narsher Singh, the same has been done.

3. We are of the considered opinion that it is settled principle that Article 14 of the Constitution of India does not operate in negative context. The Apex Court in ***Chandigarh Administration and another vs. Jagjit Singh and another, (1995) 1 SCC 745*** held that the writ Court has to investigate whether the order relied upon was contrary to law or not warranted in the facts and circumstances. It was held that an illegal and unwarranted order cannot be made the basis of issuing a writ and compelling the respondent to repeat the illegality to pass any unwarranted order. The High Court is not, thus, entitled to compel the authority to repeat the illegality over and over again. Reliance can be placed upon the judgment of the Apex Court in ***'Shanti Sports Club and another Vs. Union of India and others', (2009) 15 SCC 705*** and ***R. Muthukumar & others vs. The Chairman and Managing Director Tangedco & others, 2022 (1) SCT 652*** in this context. Relevant portion of *Shanti Sports Club (supra)*, it was held as under:-

“50.....This being the position, *Article 14* cannot be invoked by the appellants for seeking a direction to the respondents to withdraw from the acquisition of the land in question. *Article 14* of the Constitution declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words,

Article 14 cannot be invoked for perpetuating irregularities or illegalities.

4. The latest judgment of the Apex Court passed in *R. Muthukumar (supra)* also expounds the same principle. Relevant portion of the said judgment reads as under:-

“28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj & Anr. v. Special Land Acquisition Officer, (2013) 14 SCC 81, this court ruled that:

"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."

5. In such circumstances, if any higher pay scales have been given beyond what has been prescribed in the absence of any Rule, writ of mandamus cannot be issued as such, in view of the law laid down by the Apex Court also. It is in such circumstances the learned Single Judge has directed the State to issue notice to the concerned person for the rectification of the error, which has been done.

6. Keeping in view the above, we feel that there is no scope for

interference in the well reasoned order passed by the learned Single Judge as one illegality as such would lead to other persons who are similarly situated claiming higher pay scales and ask for the said relief if any positive orders are passed in one case.

7. Accordingly, the present letters patent appeal stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

01.04.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No