

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

LPA-1056-2024 (O&M)

Date of decision:- 30.04.2024

Davinder Pritpal Singh

...Appellant(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. S.M.Tripathi, Advocate,
for the appellant.

Mr. Saurav Khurana, Additional Advocate General, Punjab.

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G.S. SANDHAWALIA, A.C.J. (ORAL)

CM-2569-LPA-2024

For the reasons mentioned therein, the application for granting leave to file the appeal is allowed.

LPA-1056-2024

1. The consideration in the present appeal is to the order dated 15.03.2024 passed by the learned Single Judge in CWP-4262-2017.

2. The learned Single Judge had declined to interfere in the order dated 08.10.2015 (Annexure P-5), whereby vide resolution as such the respondent-bank had rejected the appellant-writ petitioner's claim for grant of one year extension in service. The orders having been upheld on 01.02.2016 and 02.11.2016 (Annexure P-5A and P-6) by the authorities were also subject matter of challenge before the learned Single Judge.

3. While deciding the issue of maintainability of the writ petition in favour as such of the appellant-writ petitioner on merits, the relief was not granted on the ground that the writ petitioner had submitted an application

with the Commissioner, Employees Provident Fund for taking out his Provident Fund on 26.12.2013 since he was to retire on 31.01.2014 on attaining the age of 58 years. However, he gave an option four days prior to the date of his retirement i.e. 27.01.2014 and in such circumstances since the option was to be given to the Head Office within three months prior to completing the age of 58 years, the learned Single Judge declined to grant the benefit as claimed by the writ petitioner. The claim as such of parity on account of Daljit Kaur – respondent No. 5 having been granted benefit was rejected on the ground that it could not be claimed on the rationale of Article 14 of the Constitution of India operating in the negative form.

4. The argument, thus, again repeated by learned counsel for the appellant before us is that once respondent No. 5 had been granted the benefit, therefore, there is violation of Article 14 of the Constitution of India as such and the appellant would have a legal right. A perusal of the paper-book would go on to show that as per the request made for the first time on 27.01.2014 with the respondent-bank, the appellant-writ petitioner had stated that he wished to opt for one year extension upto 31.01.2015 with continuity in service and might not be retired from service on 31.01.2014 in view of the instructions dated 08.10.2012 as adopted by the respondent-bank. Before his retirement as such, the order dated 29.01.2014 (Annexure P-2) was passed that as per Clause (a) of Rule 3.26, Volume I, Part-I of the Punjab Civil Services Rules, the Head of the Department had to be informed within three months before completing 58 years of age and the option had to be given and, therefore, his request had been rejected.

5. The rejection, thus, was based on the statutory rule itself which provided that the application had to be made at a particular point of time and a

cut-off had been provided. The said order was, thus, initially challenged by filing CWP-3313-2014 which was dismissed on 04.08.2015 on the ground that it was not maintainable. However, the writ petitioner was given liberty to file a petition before the competent authority. It is in pursuance of the orders passed on 08.10.2015, 01.02.2016 and 02.11.2016 that the second round of litigation has been initiated.

6. The resolution No. 3 dated 08.10.2015 is the subject matter of challenge. Learned counsel for the appellant also refers to the Rule in question as referred to when the case was rejected at the initial time. The Additional Registrar (General), Cooperative Societies, Punjab had repelled the challenge to the resolution on the ground that the revision petition was not maintainable under Section 69 of the Punjab Cooperative Societies Act, 1961 which order had been further upheld by the Special Secretary, Cooperation, Punjab, placing reliance upon the fact that the necessary option had to be given as per the provisions of the Punjab Civil Services Rules. It has been time and again held that the extension as such is not a vested right and it is for the Government as such to extend the benefit. The same can only be done if the applicant had applied as per the terms and conditions of the Rules. Having firstly opted to withdraw the retiral benefits and given his mind as such on 26.12.2013 and at the last moment having changed his mind on 27.01.2014 four days before the retirement led to the rejection of the request as such. Since it was in pursuance of the Rule as such, we do not find any tangible reason as such to hold to the contrary as what has been held by the learned Single Judge. The argument which has, thus, been raised that another similarly situated person has been granted the benefit of post retirement cannot as such give a legal vested right

as such to claim something which is contrary to the Rule. The notification in question reads as under:-

“Subject: Regarding extension of one year in services of the employees of the Punjab Government.

Respected Sir,

I have been directed to bring the above mentioned subject into your kind notice that in view of Clause (a) and Clause (b) of Rule 3.26 of Volume 1, Part-1 of the Punjab Civil Services Rules, the Hon’ble Governor of Punjab has pleased to accord his approval to give one year extension in service period of employees of Group “A”, Group “B”, Group “C”, Group “D” of the Punjab Government. The extension in service shall be as per the below mentioned terms and conditions:-

(a) This extension shall be given only to those employees who give their option as per the specified performa attached with this letter. In view of Clause (a) of Rule 3.26 of Volume 1, Part-1 of the Punjab Civil Services Rules, the desired option can be given to the Head of his Office within 3 months prior to completion of the date of age of 58/60 years, provided that those employees in whose retirement there is less than three months are remaining they can give their option at any time from the date of issuance of this letter. The option once given shall be deemed to be final and no permission shall be granted to amend the same.

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2. These instructions of one year extension in service shall be applicable to those employees whose date of retirement falls on 31st October, 2012 or thereafter.

Sd/-
(Mohinder Singh Prashar)
Under Secretary, Finance.”

The benefit which had been extended wrongly to someone would not give a right as such to another employee to agitate for the said benefit.

7. Article 14 of the Constitution of India does not operate in the negative context as has been held by the Apex Court in various judgements which read as under:-

In *Shanti Sports Club & another Vs Union of India & others*

(2009) 15 SCC 705, the issue was regarding the release of land under the Land

Acquisition Act, 1894 and on account of a decision having been taken parity had been sought. It was held that the concept of equality enshrined in Article 14 of the Constitution has to be read as a positive concept and there cannot be a mandate that the State should commit illegality or pass wrong order because one such order has already been passed.

The three Judge Bench in ***R. Muthukumar & others Vs Chairman and Managing Director Tangedco and others*** 2022(1) S.C.T. 652 also arrived at the same conclusion while examining the earlier precedents on the said point. The same reads as under:-

“24. 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 and another 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.”

Other decisions have enunciated or applied this principle (Ref : ***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; ***Fuljit Kaur v. State of Punjab*** (2010) 11 SCC 455, and ***Chaman Lal v. State of Punjab*** (2014) 15 SCC 715). Recently, in ***The State of Odisha v. Anup Kumar Senapati***, 2019 SCC Online SC 1207 this court observed as follows:

“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.”

8. In such circumstances, it cannot be said that the learned Single Judge has erred in any manner in dismissing the writ petition. The reliance placed upon the judgement of the Apex Court in *Union of India and others Vs Munshi Ram*, 2022 SCC Online SC 1493 on the issue of discrimination as such is without any basis. In the said case, the issue was regarding discrimination amongst similarly situated Commission Vendors/bearers. The aspect of counting 50% of service as Commission Vendors prior to their absorption as qualifying service for the grant of pensionary benefits was the subject matter of consideration. It was accordingly held that to deny the benefit in only one zone, namely, the Northern Railway would be discriminatory and violative especially when the employer was the same Railway Board which is under the Ministry of Railways and having 16 zones and 68 divisions. The aspect of the concept of negative equality as submitted on behalf of the Union of India was rejected in the said case. Resultantly, the said judgement is not applicable.

9. The appeal being meritless, accordingly, stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

30.04.2024
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No