

CWP-2825 of 2005

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

CWP-2825 of 2005

Reserved on: 10.04.2024

Pronounced on: 23.04.2024

Azad Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Piyush Gill, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to regularise the services of the petitioner w.e.f. 31.01.1996 as he has completed three years of service as daily wager and to release the consequential benefits.

2. Brief facts of the case as mentioned in the petition are that petitioner was appointed as a driver by respondent No.2 vide order dated 07.07.1992 on daily-wages and he joined as such on 09.07.1992 in the office of respondent No.3 – Sub Divisional Magistrate, Meham, and since then his work and conduct remained good. On 07.05.1993 terminated the services of the petitioner without assigning any reason. Petitioner filed a civil suit for declaration to the effect that termination order dated 07.05.1993 was illegal, null and void. The said suit was decreed by the trial Court vide judgment and decree dated 11.01.1997.

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Respondents filed appeal against the judgment and decree dated 11.01.1997, which was dismissed by the lower Appellate Court vide judgment and decree dated 06.11.1997. Thereafter, respondent filed Regular Second Appeal before this Court, which was admitted on 09.09.1999 and operation of the impugned judgments and decrees was stayed with a direction not to terminate the services of the petitioner. It is further pleaded that State Government issued instructions dated 07.03.1996 (Annexure P-4) by which the services of daily-wage employees, who completed five years of service as daily-wagers, were regularised w.e.f. 31.01.1996. Petitioner made several requests to regularise his services w.e.f. 31.01.1996. However, his requests have not been accepted by the respondents. Hence, this writ petition.

3. Learned counsel for the petitioner contended that petitioner was appointed as a daily-wage driver by respondent No.2 and pursuant to interim order dated 09.09.1999 passed by this Court he continued to in service of the respondents upto 31.07.2022, therefore, he is entitled to be regularised under the policy of 1996.

4. *Per contra*, learned State counsel contended that services of the petitioner were no more required by the respondents, therefore, his services were dispensed with. He contended that petitioner cannot claim regularisation on the basis of interim order passed by this Court.

5. I have heard learned counsel for the parties and perused the record.

6. Petitioner was engaged as daily-wage driver for three months by respondent No.2 on 07.07.1992. He was given extension as

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his services were further required by the respondents. Vide order 07.05.1993 services of the petitioner were dispensed with as his services were no more required by the respondents. Petitioner filed a civil suit, which was decreed and order dated 07.05.1993 was set aside vide judgment and decree dated 11.01.1997. Appeal filed by the respondents against the judgment and decree dated 11.01.1997 was dismissed by the lower Appellate Court. Thereafter, respondents approached this Court by way of Regular Second Appeal, which was admitted vide order dated 09.09.1999 and operation of the impugned judgments and decrees was stayed with a direction not to terminate the services of the petitioner. Now on the basis of said interim order petitioner is claiming regularisation of his services.

7. Hon'ble Supreme Court in ***State of Karnataka and others v. Umadevi and others, 2006(2) S.C.T. 462*** has held that employees who have been engaged without following due procedure prescribed by Rules applicable for such posts cannot be regularised. The relevant portion from the said judgment reads as under: -

*“34. While answering an objection to the locus standi of the Writ Petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized, Chief Justice Bhagwati, speaking on behalf of the Constitution Bench in **Dr. D.C. Wadhwa & Ors. Vs. State of Bihar & Ors. (1987 (1) S.C.R. 798)** stated:*

"The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any

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other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by

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following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down

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the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are

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swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real

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sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

37. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V.

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Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as

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recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the

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principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

40. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask

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itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in

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the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the

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obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of

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the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

8. Further, the Hon’ble Supreme Court in ***Union of India and others v. Ilmo Devi and another, 2021(4) S.C.T. 312*** has held that mere continuation of service by a daily-wager does not confer any right upon him to regularise his services. Relevant portion from the said judgment reads thus: -

“8.5 Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. In the case of R.S. Bhonde and Ors. (supra), it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere

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continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.

8.6 In the case of Daya Lal &Ors. (supra) in paragraph 12, it is observed and held as under:-

“12. We may at the outset refer to the following well settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long

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number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636], S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279], Kurukshetra

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Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680] and Official Liquidator v. Dayanand [(2008) 10 SCC 1.]

8.7 Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.”

9. Petitioner was engaged on daily-wage basis without following due procedure and his services were dispensed with when the regular incumbent joined the duties. In view of the settled law, services of the petitioner cannot be regularised on the strength of interim order as the same is subject to final outcome of the case and does not confer any right to claim regularisation of his services. Reliance is placed upon the Division Bench judgment of this Court in ***LPA-1454 of 2019 – Haryana Staff Selection Commission v. PreetyPoswal – decided on 14.10.2019***, wherein it has been held as under:

“10. It is settled law that no right can be claimed by the petitioner on the strength of an interim order, which was passed without considering or finally deciding the core issue of eligibility of the petitioner to participate in the interview. It was purely an interim arrangement.

11. It is also a settled proposition of law that neither of the parties can be prejudiced on account of any interim order or act of the Court. In view of the aforesaid, mere fact of permitting the petitioner to participate in the interview on the strength of an interim order would not confer any right

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upon the respondent/original petitioner to claim benefit of appointment by counting total marks, i.e. marks obtained in the written examination and the interview obtained by the respondent/original petitioner specially as the fact that the respondent/original petitioner was not even eligible to be called for interview on account of having obtained less than cut off marks is undisputed and was a material fact going to the root of the matter and was required to be considered by the learned Single Judge while finally deciding the petition.

12. This Court is bound to undo the wrong resulting from the interim order in view of the maxim actus curiae neminem gravabit and therefore, the submission made by the petitioner on the strength of her participation in the interview on the basis of the interim order passed by this Court, has no substance and is hereby rejected. In support of the aforesaid proposition of law, we can profitably refer to the decision of the Supreme Court rendered in the case of Kalabharati Advertising vs. Hemant Vimalnath Narichania and others, (2010) 9 Supreme Court Cases 437. The Supreme Court in paragraphs 15, 16 & 17 has held as under:-

“15. No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that

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the act of the Court shall prejudice no one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. [Vide: A.R. Sircar (Dr.) v. State of U.P., 1993 Supp (2) SCC 734; Shiv Shankar v. U.P. SRTC, 1995 Supp. (2) SCC 726; Arya Nagar Inter College v. Sree Kumar Tiwary, AIR 1997 SC 3071; GTC Industries Ltd. v. Union of India, AIR 1998 SC 1566; and Jaipur Municipal Corporation v. C.L. Mishra, (2005) 8 SCC 423.]

16. In Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620, this Court examined the issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. ITO, AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. A similar view has been reiterated by this Court in Mahadeo Savlaram Shelke v. Pune Municipal Corpn. (1995) 3 SCC 33.

17. In South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648, this Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful

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or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.”

10. In view of the above, present petition is dismissed.

23.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No