



(118)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-250-2024 (O&M)
Date of decision:- 09.05.2024

Bhagat Singh
...Appellant(s)

Versus

State of Haryana and others
...Respondent(s)

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

Present: Mr. Kartar Singh Malik-I, Advocate,
for the appellant.

Ms. Shruti Jain Goyal, Senior Deputy Advocate General, Haryana.
* * * *

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

CM-1953-LPA-2024

Leave is granted to place on record the written statement filed in
the writ petition.

The application is allowed subject to just exceptions.

LPA-250-2024

1. The correctness of the order dated 29.11.2023 passed by the learned Single Judge in CWP-14523-2021 has been questioned by the appellant-writ petitioner.
2. The learned Single Judge had declined to interfere in the order dated 25.06.2020 (Annexure P-3) which was subject matter of challenge, whereby the benefit of ACP was declined to the appellant-writ petitioner. The reason which weighed with the authorities for not granting the benefit to the appellant-writ petitioner was that he had not passed the departmental examination as per the Haryana Civil Services (Assured Career Progression)



Rules, 1998 and the guidelines issued by the Government on 26.10.1998 & 24.05.2002.

3. The writ petition was, thus, filed without challenging the conditions as such. The defence of the State was also that the benefit of ACP has to be granted to the government servant who is fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy. Further, if such promotion involves test of any departmental post or other test etc. such condition is also to be fulfilled. The appellant-writ petitioner having not cleared the departmental test the State raised its objection. The learned Single Judge also noticed that the appellant-writ petitioner had superannuated on 30.06.2018 from the post of Patwari and the writ petition as such was filed in the year 2021. The claim of the appellant-writ petitioner as such, that on completion of 24 years of service he was entitled for the second ACP, had been rightly declined on account of him having not passed the departmental examination which was mandatory.

4. Reliance has been placed upon paragraph 13 of the writ petition to submit that other similarly situated persons were granted the benefit while placing reliance upon the order dated 28.10.2003 (Annexure P-6). The State in its reply in paragraph 13 has specifically stated that the benefit granted to Mahabir Singh and others in CWP-1997-2007 and other connected matters on 22.08.2022 was going to be the subject matter of challenge in LPA and, therefore, had contested the claim for grant of ACP. Apparently, the Rules of 1998 are not subject matter of challenge. The appellant-writ petitioner was very well aware of the reason given in the impugned order for denial of ACP. The appellant-writ petitioner having not chosen to challenge the Rules as such, we are of the considered opinion that the learned Single Judge is well justified in denying the benefit. The fact also remains that it is after retirement that the



writ petition had been preferred, whereas the cause of action for the grant of benefit had arisen in the year 2006. The same having not been preferred during the period of his service, but after three years of retirement, we are of the considered opinion that the writ petition was, therefore, rightly dismissed by the learned Single Judge.

5. It is settled principle that even on the anvil of Article 14 of the Constitution of India, the appellant-writ petitioner will not be able to make much headway. It is settled proposition that even if benefit has been granted against the Rule(s) as such the said Article would not operate in the negative manner and an illegality which has been done in the case of one employee will not have to be repeated in the case of others 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.”

6. Keeping in view the above, we do not find any illegality or irregularity in the judgement passed by the learned Single Judge which may warrant our interference.
7. The appeal being meritless, accordingly, stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

09.05.2024
Amodh Sharma

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