

(2010) 03 UK CK 0010

In the Uttarakhand High Court

Case No : Special Appeal No. 247 of 2008

Director, Krishi Utpadan Mandi Samiti and Another

APPELLANT

Vs

Lal Chand

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2011) 2 UC 1144

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Advocate : V.B.S. Negi, for the Appellant; I.S. Mehra, for the Respondent

Judgement

J.S. Khehar, C.J.—Respondent No. 1 was appointed as a substantive Peon/Chaprasi in the Krishi Utpadan Mandi Samiti on 1.12.1977. Along with Respondent No. 1, one Ranjit Singh (Respondent No. 3 in Writ Petition (SS) No. 1959 of 2003) was also appointed as a Peon/Chaprasi in the Krishi Utpadan Mandi Samiti on the same date i.e. on 1.12.1977. The aforesaid Ranjit Singh came to be promoted to the post of Clerk/Stenographer by an order dated 29.4.1991. Ranjit Singh had allegedly demonstrated his eligibility, for promotion to the post of Clerk/Stenographer, on the basis of the fact that he had qualified the "Prathama"/"Madhyama" examinations from Hindi Sahitya Sammelan, Allahabad, which he claimed were equivalent to High School/Intermediate of the U.P. Education Board. Like Ranjit Singh, the Petitioner had also qualified the "Prathama" and "Madhyama" examinations from Hindi Sahitya Sammelan, Allahabad, and as such, he too claimed eligibility for promotion to the post of Clerk/Stenographer. Since the Petitioner was denied promotion allowed to Ranjit Singh, he approached this Court by filing Writ Petition (SS) No. 1959 of 2003. The learned Single Judge while disposing of the aforesaid writ petition vide an order dated 25.7.2008 directed the Director, Krishi Utpadan Mandi Samiti, Uttarakhand, Dehradun, to consider the claim of the Petitioner for promotion to the post of Clerk/Stenographer by treating him as eligible on the same premises

as Ranjit Singh had been treated as eligible.

2. Through the instant Special Appeal, the Director, Krishi Utpadan Mandi Samiti, Uttarakhand, Dehradun has impugned the order passed by the learned Single Judge dated 25.7.2008, disposing of the Writ Petition (SS) No. 1959 of 2003.

3. It is the vehement contention of the learned Counsel for the Appellant that "Prathama" and "Madhyama" examinations from Hindi Sahitya Sammelan, Allahabad are not equivalent to the High School/Intermediate of U.P. Education Board. It is further asserted that the certificates awarded by Hindi Sahitya Sammelan, Allahabad have not been recognized by the State of Uttar Pradesh (and by the successor State of Uttarakhand,) and as such, Respondent No. 1 - Lal Chand cannot be treated as eligible for promotion to the post of Clerk/Stenographer. It is submitted that the mistake earlier committed by the Appellant in allowing promotion to Ranjit Singh cannot be a basis for claiming promotion. In this behalf, it is submitted that a plea of discrimination can emerge from an order rightfully passed, and not, from an order wrongfully/mistakenly passed. Since Respondent No. 3 Ranjit Singh was not promoted rightfully, on account of his ineligibility, the same cannot be a basis for claiming promotion by Respondent No. 1 Lal Chand herein.

4. We have considered the solitary contention of the learned Counsel for the Appellant. We are satisfied that the instant Special Appeal deserves to be allowed for the very reasons depicted by the learned Counsel for the Appellant in his sole submission, namely, that the claim of Respondent No. 1 herein Lal Chand could not have been considered on the basis of the order of promotion Ranjit Singh dated 29.4.1991, as Ranjit Singh was not validly promoted to the post of Clerk/Stenographer, as he did not fulfil the prescribed qualifications of the High School/Intermediate of U.P. Education Board. The qualification possessed by Ranjit Singh namely "Prathama" and "Madhyama" examinations from Hindi Sahitya Sammelan, Allahabad having not been recognized by the State of Uttar Pradesh or successor State of Uttarakhand, the same could not have been taken into consideration to bestow eligibility on Ranjit Singh.

Whilst it was open to the Respondent Lal Chand herein to assail the aforesaid promotion order of Ranjit Singh dated 29.4.1991 (to the post of Clerk/Stenographer) by filing a petition claiming a writ in the nature of certiorari, it was not open to the Respondent No. 1 - Lal Chand to seek a writ in the nature of mandamus claiming discrimination on the basis of a wrongful/illegal order passed in favour of Ranjit Singh. In so far as the instant issue is concerned, interference may be made to the decision in Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, , wherein it was held as under:

22. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the Petitioner who has

approached the Court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the Petitioner is seeking, may be of some relevance. But where in law, a writ Petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative quality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in *Chandigarh Admn. v. Jagjit Singh* thus; (SCC pp. 750-51, para 8) "Generally speaking, the mere fact that the Respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the Respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the Respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the Petitioner if it is found that the Petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the Petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the Petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion such a course-barring exceptional situations-would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be

repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

23. In Gurusharan Singh v. New Delhi Municipal Committee this Court observed (SCC p. 465, para 9) "There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State.....so far such Petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such Petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the Petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.

5. For the reasons recorded hereinabove, the instant Special Appeal is allowed. The impugned order dated 25.7.2008 passed by the learned Single Judge disposing of Writ Petition (SS) No. 1959 of 2003 is hereby set aside.