
(2013) 09 AHC CK 0061
In the Allahabad High Court
Case No : Writ A No. 36196 of 2001

Girja Kishore and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 10 ADJ 502 : (2014) 3 AWC 2669 : (2013) 4 LLJ 691

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Vishnu Swaroop Srivastava and Shesh Kumar, for the Appellant;

Judgement

Sudhir Agarwal, J.—The writ petition having been restored vide order of date passed on Restoration Application, as requested by learned counsels for parties, I proceed to decide this matter finally at this stage. Heard Sri Shesh Kumar, learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. This case is repetition of frequently visited litigation at the instance of illegal appointees, who are aspiring to get permanency/regularization on a post, which has been acquired and occupied by them, in a manner which is not consistent with the procedure for recruitment, and obviously continued on account of active support and collusion of appointing authority. A person, who entered a public office by committing breach of law with impunity, has come to this Court to obtain a seal of approval of his occupation so as to make it for all times to continue, without any intervention, and would confer a right upon him to such post in the garb of regularization or absorption etc. Another aspect of the argument advanced is that a person, even if entered service illegally, and, when competent authority, for whatever reason, intend to rectify his mistake by removing such illegal appointee, beneficiaries, come to this Court, obtain ex parte interim order and then continue to hold such post. After a long time, when the matter remained pending before this Court and interim order has continued, such person claim sympathy suggesting that his matter should be treated with a

humane approach by conferring benefit initially given under the interim order, as a permanent one, even if on merits ultimately writ petitioner fails to make out any substantive case to succeed. In other words, an ex parte interim order having conferred benefit upon one of the party, should be constituted so as to cause a permanent loss to other side even if ultimately the writ petition fails.

3. In my view, both the submissions are thoroughly misconceived and deserve to fail outright.

4. The brief facts giving rise to the present dispute are that petitioner No. 1 was engaged as a Class IV employees against a substantive vacancy, caused due to the death of holder of the post one Ramagya Mishra. The competent appointing authority i.e. District Magistrate, Gorakhpur vide order dated 7.4.1993 appointed petitioner No. 1 for a period of 89 days on purely ad hoc basis with a clear stipulation that appointment is temporary and liable to be terminated at any point of time. The letter of appointment further states that after expiry of period of appointment i.e. 89 days, it shall automatically cease. The aforesaid appointment/engagement was extended from time to time and last extension was granted by order dated 13.6.2001 for the period of 8.6.2001 to 4.9.2001. Similar appointments were made in respect to petitioners No. 2, 3 and 4 and they were also granted extension from time to time.

5. Apprehending discontinuance, present writ petition was filed in November, 2001 seeking a writ of mandamus commanding respondents to allow petitioners to continue in service and do not discontinue them. Further mandamus was sought directing respondents to regularize petitioners on Class IV post, since working for more than seven years though with some artificial breaks.

6. Entertaining the writ petition, on 9.11.2001, this Court passed the following ex parte interim order:

List this petition on 22.11.2001 along with W.P. Nos. 30391 of 1995, 130 of 1996, and 36270 of 1995. The office will ensure that title of cases and names of parties are printed in the cause list. Till the next date of listing in case person junior than the petitioners are working then parties will maintain status quo.

7. Pursuant to the above orders, the petitioners continued to work.

8. Learned counsel for the petitioners contended that even if petitioners were not initially appointed after following procedure for recruitment provided for Class IV employees, still they are entitled for regularization having continued to work for more than seven years, when the writ petition was filed, and now almost 19 years since then, pursuant to ex parte interim order passed in November, 2001.

9. Learned Counsel for petitioners sought to rely on para 53 of the judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and contended that Apex Court has carved out an exception in respect to such employees who have continued to work for ten years more, without intervention of the Courts and tribunal, and they are entitled to be considered for

regularization. He also placed reliance on a learned Single Judge of this Court in *Ramveer Singh and Others Vs. GAIL India Limited and Manager (Human Resource) GAIL India Limited*, in which it was held:

However, the Supreme Court in the case of *Secretary, State of Karnataka v. Uma Devi (supra)* has carved out an exception. In paragraph-53 of the said judgment, the Supreme Court held that if the persons appointed on ad hoc, casual or contract basis were duly qualified and were working against a sanctioned post and continued to work for several years without any intervention of an order of the Court, in such an eventuality, the process of regularisation could be made and if it was ultimately found that the employee was entitled for the relief, it would be possible for the Court to accordingly mould the relief.

10. Having given my anxious consideration, I do not find any force there to. In para 53 of the judgment, in *Secretary, State of Karnataka v. Uma Devi (supra)*, the exception carved out by Apex Court is confined to the cases where the appointments are "irregular" and not "illegal" as explained in *State of Mysore and Another Vs. S.V. Narayanappa*, , *R.N. Nanjundappa Vs. T. Thimmiah and Another*, and *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, .

11. The distinction between "irregular" and "illegal" appointments as referred to in para 53 of the judgment in *Secretary, State of Karnataka v. Uma Devi (supra)* has been dealt with in a subsequent decision in *State of M.P. and Others Vs. Lalit Kumar Verma*, wherein para 12 it has been held:

12. The question which, thus, arises for consideration, would be: Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the Constitutional scheme as also the recruitment rules framed by the employer, which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

12. Learned counsel for the petitioners at this stage submitted that in *Mineral Exploration Corporation Employees' Union Vs. Mineral Exploration Corporation Limited and Another*, , the Apex Court issued some direction for regularization of workmen who were continuing for a long time, referring to para 53 in *Secretary, State of Karnataka v. Uma Devi (supra)*, therefore, the petitioners is also entitled. However, it would be useful to notice that relying on *Mineral Exploration Corpn. Employees' Union v. Mineral Exploration Corpn. Limited and Another (supra)*, a similar argument was raised in *State of M.P. and Others v. Lalit Kumar Verma (supra)*, but the same has been negated by referring to para 39 of *Mineral Exploration Corpn. Employees' Union v. Mineral Exploration Corpn. Limited and Another (supra)*, and the observations of Court in paras 13 to 16 of

the judgment of State of M.P. and Others v. Lalit Kumar Verma (supra) are as under:

13. In National Fertilizers Ltd. v. Somvir Singh (supra) it has been held:

23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minority had not been given due consideration.

24. The Constitution Bench thought of directing regularization of the services only of those employees whose appointments were irregular as explained in State of Mysore v. S.V. Narayanappa (supra), R.N. Najundappa v. T. Thimmiah (supra) and B.N. Nagaraj v. State of Karnataka (supra) wherein this Court observed:

16. In B.N. Nagarajan v. State of Karnataka (supra), this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service.

14. In R.S. Garg Vs. State of U.P. and Others, it has been held by this Court:

24. The original appointment of the 3rd respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench. Furthermore, relaxation, if any, could have been accorded only in terms of Rule 28 of the Rules; Rule 28 would be attracted when undue hardship in any particular case is caused. Such relaxation of Rules shall be permissible only in consultation with the Commission. It is not a case where an undue hardship suffered by the 3rd respondent could legitimately be raised being belonging to a particular class of employee. No such case, in law could have been made out. It, in fact, caused hardship to other employees belonging to the same category, who were senior to him; and thus, there was absolutely no reason why an exception should have been made in his case.

(See also State of Gujarat and Another Vs. Karshanbhai K. Rabari and Others, .)

15. Yet, recently, in Principal, Mehar Chand Polytechnic, Jalandhar City and Another Vs. Anu Lumba and Others, it was held:

35. The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus.

16. We may, however, notice that in Mineral Exploration the attention of this Court was not drawn to the earlier precedents including a three-judge Bench of this Court in B.N. Nagarajan v. State of Karnataka.

13. The same view has been reiterated in Municipal Corporation, Jabalpur Vs. Om Prakash Dubey, (para 10 to 19) State of U.P. and Others Vs. Desh Raj, (para 9 to 12) and Govt. of A.P. and Others Vs. K. Brahmanandam and Others, .

14. Learned counsel for the petitioners also contended that since various Government Orders were issued and the matter was also considered by the respondents, therefore, petitioners have legitimate expectations of getting regularisation and it is not open to respondents not to consider petitioners for regularisation and instead dispense their services.

15. Here also I do not find any force in the submission particularly in view of the law laid down by the Apex Court rejecting a similar contention in Rajasthan Krishi Vishva Vidhyalaya, Bikaner Vs. Devi Singh, where referring to the judgment of the Constitution Bench in Secretary, State of Karnataka v. Uma Devi (supra) the Apex Court rejected a similar contention. It was held that a person enters into a temporary employment or engagement on contractual or casual worker and the engagement is not based on a proper selection as provided in the rules or procedure, cannot invoke the doctrine of legitimate expectations on the post knowing it well that the appointment on the post can be made only by following a proper procedure for selection which is consistent with Article 16 of the Constitution. It was clearly observed that theory of legitimate expectations cannot be advanced on temporary, contractual or casual employees. To the same effect is the view taken in Accounts Officer (A and I) APSRTC and Others Vs. K.V. Ramana and Others, , Management, The Assistant Salt Commissioner Vs. Secretary, Central Salt Mazdoor Union, and State of Himachal Pradesh and Another Vs. Ravinder Singh, .

16. All the above propositions and expositions of law have continuously been followed till date and it would be appropriate to refer some of the recent authorities being follow up of Constitution Bench judgment in Secretary, State of Karnataka v. Uma Devi (supra).

17. In State of Karnataka and Others Vs. Sri G.V. Chandrashekar, , the Court

referred to Para 53 of judgment in Secretary, State of Karnataka v. Uma Devi (supra) as read in National Fertilizers Ltd. v. Somvir Singh (supra) and thereafter observed:

We feel bound by the observations made therein. Initial recruitment of the respondents being wholly illegal and contrary to the constitutional scheme of this country, the impugned judgment of the High Court cannot be upheld.

18. Same thing has been reiterated in State of Punjab and Others Vs. Bahadur Singh and Others, , C. Balachandran and Others Vs. State of Kerala and Others, and Harminder Kaur and Others Vs. Union of India (UOI) and Others, .

19. In Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another, , the Court has gone to the extent that even if some other persons similarly placed have been absorbed, that cannot be a basis to grant a relief by the Court which is otherwise contrary to statute. In para 25 of judgment, the Court said:

Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court. However, we intend to refer to a latest decision of this Court on this point in the case of State of Bihar Vs. Upendra Narayan Singh and Others, , the relevant portion of which is extracted hereinbelow:

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of any 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 wrong order...

20. In State of Karnataka and Others Vs. Gadilingappa and Others, , the Court reiterated that it is well settled principal of law that even if a mistake is committed in an earlier case, the same cannot be allowed to be perpetuated. In that case the employees did not possess requisite qualifications, but continued to work as primary Schools Teachers for a long period and rendered service without any break. Hence, their claim for regularization/absorption was negated by Government. High Court, taking a passionate view directed for absorption. Reversing the judgment, the Apex Court in para 6 said:

Admittedly, the respondents herein were working as Primary School Teachers for a long period of time and they had rendered service as such continuously without any break. However, after perusing the relevant documents on record what

comes to light is the fact that none of the respondents had undergone the T.C.H. course, which was the minimum prescribed qualification at the relevant time for being appointed to the post of a teacher. Since the respondents did not possess the minimum prescribed qualification and because of which their appointment was in contravention of the Cadre and recruitment Rules, we are of the considered view that their appointments were illegal appointments.

21. In *State of Karnataka and Others Vs. Ganapathi Chaya Nayak and Others*, the Court observed that now law is well settled. In para 8, it says:

In view of the settled position of law in this regard which has been reiterated in a number of judgments of this Court, we hold that the claims of the respondents for regularization or absorption cannot be sustained. Accordingly, we allow the appeals and set aside the orders passed by the High Court as also the KAT.

22. In *Md. Ashif and Others Vs. State of Bihar and Others*, , the Court referring to the earlier decisions said:

7. ... The legal position regarding the right of an employee to seek regularisation of his services stands settled by a long line of the decisions of this Court. It may arise firstly in situations where against an available clear vacancy an appointment is made on ad hoc or daily-wage basis by an authority competent to do so and such appointment is continued from time to time without any artificial break in service. Any such appointment may be regularized giving him security of tenure. The all important condition precedent for such regularization is that the initial entry of such an employee must be made against a sanctioned vacancy and by following the rules and regulations governing such entry.

8. The second situation in which regularization could be granted was where the initial entry of the employee against an available vacancy was found suffering from some flaws in the procedure in making the appointment though the person appointing was competent to make such initial recruitment and had otherwise followed the procedure prescribed for such recruitment. A need may then arise for regularization of the initial appointment by the competent authority with a view to curing the irregularity if any in the same and with a view to granting security of tenure to the incumbent. It is necessary in such situations that the initial entry of the employee is not totally illegal or in breach of the established rules and regulations governing such recruitment.

23. In *Mohd. Ashif and Others v. State of Bihar and Others* (supra), Apex Court upheld termination of the employees working as Primary Health Worker after a decade and half, observing that their appointments were not made in accordance with Rules and also by the competent authority, in para 13 and 14 of judgment, the Court said:

13. Applying the test laid down by this Court in *Secretary, State of Karnataka v. Uma Devi* (supra) and the cases referred to above, to the case at hand, there is no gainsaying that the appointments of the appellants as Primary Health Workers

were totally illegal and violative of Articles 14 and 16 of the Constitution which guarantee equality of opportunity to all those who were otherwise eligible for such appointments. The Chief Medical Officer who had made the appointments was not vested with the power to do so nor were the claims of other candidates eligible for appointments against the posts to which the appellants were appointed, considered. Surprisingly, the appointments had come by way of absorption of the appellants who were working as Voluntary Health Workers on a monthly honorarium of Rs. 50/- only.

14. The High Court has, in our opinion, correctly held that there was no cadre of Voluntary Health Workers who were working on an honorarium in State run dispensaries. The very nature of the appointment given to the appellants as Voluntary Health Workers was honorary in nature which entitled them to the payment of not more than Rs. 50/- per month. It is difficult to appreciate how the Chief Medical Officer could have regularized/absorbed such Voluntary Health Workers doing honorary service against the post of Primary Health Workers which carried a regular pay-scale and which could be filled only in accordance with the procedure prescribed for that purpose. The appointment of the appellants against the said posts was thus manifestly illegal and wholly undeserved to say the least, inasmuch as these appointments came to be cancelled pursuant to the said directions no matter nearly a decade and a half later the termination could not be said to be illegal so as to warrant interference of a writ Court for reinstatement of those illegally appointed. The High Court was, in that view of the matter, justified in declining interference with the order of cancellation and dismissing the writ petitions.

24. In Union of India (UOI) and Others Vs. A.S. Pillai and Others, the Apex Court referring to para 48 of judgment in Secretary, State of Karnataka v. Uma Devi (supra) expressed its full agreement thereto in para 18 and 19 of judgment as under:

18. In our opinion, this Court has rightly held in para 48 of the said case that:

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.

19. We are in respectful agreement with the aforestated judgment of this Court and in our opinion the aforestated judgment will not render any help to the petitioners because there is no separate cadre of civilian Bandsmen to which the

petitioners can be absorbed. Moreover, they being part-timers, cannot be absorbed in another full time cadre. Therefore, no direction with regard to absorption of the petitioners in any cadre can be given.

25. In *Satya Prakash and Others Vs. State of Bihar and Others*, , the Apex Court also explained para 53 of judgment in *Secretary, State of Karnataka v. Uma Devi* (supra) and in paras 8, 9, 12, 13 and 15 of the judgment said as under:

8. In *Secretary, State of Karnataka v. Uma Devi* (supra) this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees. This Court held that such directions issued could not be said to be in consistent with the constitutional scheme of public employment. This Court held 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 following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

9. Paragraph 53 of *Secretary, State of Karnataka v. Uma Devi* (supra), judgment, deals with irregular appointments (not illegal appointments). The Constitution Bench specifically referred to the judgments in *State of Mysore v. S.V. Narayanappa* (supra) and *R.N. Nanjudappa v. T. Thimmiah* (supra) in paragraph 15 of *Secretary, State of Karnataka v. Uma Devi* (supra), judgment as well. Let us refer to paragraphs 15 and 16 of *Secretary, State of Karnataka v. Uma Devi* (supra), judgment in this context.

12 ... The Constitution Bench has, therefore, clearly drawn a distinction between temporary employees, daily-wagers and those who were appointed irregularly in the sense that there was non-compliance of some procedure in the selection process which did not go to the root of the selection process. The appellants in our view will not fall in the category of the employees mentioned in paragraph 53 read with paras 15 and 16 of the Constitution Bench judgment.

13. The above view is further reinforced when we read paragraphs 8 and 55 in *Secretary, State of Karnataka v. Uma Devi* (supra), case, wherein similar arguments were raised but rejected by the Constitution Bench.

15. In our view, the appellants herein would fall under the category of persons mentioned in paragraphs 8 and 55 of the judgment and not in paragraph 53 of judgment in *Secretary, State of Karnataka v. Uma Devi* (supra).

26. In *State of Rajasthan and Others v. Daya Lal and Others* (Civil Appeals No. 486-495 of 2011) decided on 13.1.2011, the Court has culled out certain principles from the decisions of *Secretary, State of Karnataka v. Uma Devi* (supra) and its follow up and held as under:

We may at the outset refer to the following well settled principles relating to

regularization 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 regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

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

(iii) Even where a scheme is formulated for regularization 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 regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization 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: M. Raja Vs. CEERI Educational Society Pilani and Another, . S.C. Chandra and Others Vs. State of Jharkhand and Others, , Kurukshetra Central Co-operative Bank Ltd. v. Mehar Chand, (2007) 15 SCC 680, and Official Liquidator Vs. Dayanand and Others,).

27. The exposition of law is very clear that a person, if not appointed/absorbed after following the procedure prescribed in Rules, which gives equal opportunity of employment to all eligible persons and thereby complying with Article 16 of Constitution, in absence of any statutory provision entitling such person to claim regularization, validity whereof though is doubtful, since the Apex Court has said that Article 16 constitute basic feature of Constitution and nothing can be validate which may violate Article 16, can be directed to be regularized or absorbed irrespective of length of time one has continued to work. Any other view will give a licence to some of the mischievous authorities and resourceful individuals to defeat the scheme of Constitution under Article 16 as also the process of recruitment under the Rules and thereby enter a service and grasp it for all times to come through back door. The earlier sympathy, which used to generate merely on the fact that somebody has worked for a long time has been overruled by concept that rule of law should not be allowed to be breached since only those who have some extra resources can dare to violate the law and, therefore, any consideration in their favour shall confer upon them a premium of their act of committing breach of law. This is the message handed down to us by Constitution Bench in *Secretary, State of Karnataka v. Uma Devi* (supra) and has been followed and reiterated in all the subsequent authorities.

28. Sri S. Kumar further contended that since for the last more than 12 years the petitioners have continued to work, pursuant to ex parte interim order and therefore, it would be very harsh/hard in case they are rendered unemployed as a result of dismissal of the writ petition. This Court must recognize the only factum that the petitioners have continuously worked for more than 19 years and ignoring reason and background facts on account whereof they are working, mere factum to be recognized is the length of working, so as to grant benefit of regularization to the petitioner. Reliance is placed on a single judge decision of this Court in *Kunj Behari Tewari v. The District Inspector of Schools, Deoria and Another*, (2013) 2 UPLBEC 1128.

29. The above argument is based on the fact that pursuant to an ex parte interim order passed by this Court on 9.11.2001, petitioners have continued to work and therefore, this continuation, founded on an ex parte interim order of this Court, must result in conferment of substantial right upon petitioners to continue in service as a regular employee, even if on merits, the real issue raised in the writ petition is not decided in their favour.

30. Mere fact that an interim order was passed and incumbent continued on the post, that would not confer any benefit or cause of action to petitioner if ultimately he does not succeed in the writ petition.

31. It is well established that act of the Court shall prejudice none. The services rendered pursuant to an interim order would not give any benefit to petitioners. The effect of dismissal of writ petition is, as if no interim order was ever passed. This issue has been considered by a Division Bench of this Court (in which I was also a member) in *Smt. Vijay Rani Vs. Regional Inspectress of Girls Schools*,

Region-I and Others and the Court held as under:

An interim order passed by the Court merges with the final order and, therefore, the result brought by dismissal of the writ petition is that the interim order becomes non est. A Division Bench of this Court in *Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others*, , while considering the effect of dismissal of writ petition on interim order passed by the Court has laid down as under:

It is well settled that an interim order merges in the final order and does not exist by itself. So the result brought about by an interim order would be non est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect to postponing implementation of the order of compulsory retirement. It must in the circumstances take effect as if there was no interim order.

32. The same principal has been reiterated in the following cases:

(A) *Sri Ram Charan Das Vs. Pyare Lal*, .

In *Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others*, a Bench of this Court has held that orders of stay of injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non est in the eye of law in final order grants no relief. In this view of the matter it seems to us that the interim stay became non est and lost all the efficacy, the commissioner having upheld the permission which became effective from the date it was passed.

(B) *Shyam Manohar Shukla Vs. State of U.P. and Others*,

It is settled law that an interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all (see *Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others*, and *Sri Ram Charan Das Vs. Pyare Lal*,).

(C) *M/s. Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board and other*, .

After the dismissal of the writ petitions wherein notification dated 21.4.1990 was stayed, the result brought about by the interim orders staying the notification, became non est in the eye of law and lost all its efficacy and the notification became effective from the beginning.

33. About the benefit, one may come across, founded on interim order, the Court in *Raghavendra Rao Etc. Vs. State of Karnataka and Others Etc.*, has observed:

It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service.

34. So far as the service rendered by petitioners for long time is concerned, it is well settled that long continuance, if the appointment has not been made strictly

in accordance with law, would not confer any right upon incumbent to hold the post. The Apex Court in *Shesh Mani Shukla Vs. D.I.O.S. Deoria and Others*, held:

It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State.

35. Lastly it is contended that in some matters, some observations have been made by this Court that authorities concerned have regularized appointees like petitioners and therefore, similar benefit should be extended to them also.

36. Be that as it may, it cannot be doubted that if an illegal appointment has been made by authorities concerned, disobeying provisions, petitioners do not get a right to claim parity with such illegal act of the respondents. In *Union of India and Another v. Kartick Chandra Mondal and Another (supra)*, the Court has gone to the extent that even if some other persons similarly placed have been absorbed, that cannot be a basis to grant a relief by the Court which is otherwise contrary to statute. In para 25 of judgment, the Court said:

Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court. However, we intend to refer to a latest decision of this Court on this point in the case of *State of Bihar Vs. Upendra Narayan Singh and Others*, , the relevant portion of which is extracted hereinbelow:

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of any 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 wrong order...

37. In *State of Karnataka and Others v. Gadilingappa and Others (supra)*, the Court reiterated that it is well settled principal of law that even if a mistake is committed in an earlier case, the same cannot be allowed to be perpetuated.

38. It is well settled that if a wrong has been committed by the respondents in respect to some other persons, that will not provide a cause of action to claim

parity on the ground of equal treatment since the equality in law under Article 14 is applicable for claiming parity in respect to legal and authorized acts. Two wrongs will not make one right. The Apex Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, ; Union of India (UOI) and Another Vs. International Trading Co. and Another, ; Lalit Mohan Pandey Vs. Pooran Singh and Others, ; Anand Buttons Ltd. etc. v. State of Haryana and Others, AIR 2005 SC 5565; and Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore Vs. President, Indore Development Authority, has held that Article 14 has no application in such cases.

39. At this stage, I may also notice the fact that though this writ petition was connected with some other writ petitions but all have been dismissed without any question to be decided on merits.

40. It was connected with Writ Petitions No. 30391 of 1995, 130 of 1996 and 36270 of 1995. I have perused the record thereof. The Writ Petition No. 30391 of 1995, wherein interim order was passed on 30.10.1995 was ultimately dismissed as withdrawn on 23.3.2004. Writ Petition No. 130 of 1996, wherein ex parte interim order was passed on 3.1.1996 also stood dismissed as withdrawn on 10.2.2004 and Writ Petition No. 36270 of 1995, wherein ex parte interim order was passed on 13.12.1995 stood dismissed as withdrawn on 23.3.2004. The aforesaid writ petitions and their dismissal therefore, would be of no consequence so far as this writ petitioner is concerned. I am also not concerned as to what has been done by respondent authorities with the petitioners of those writ petitions since they are not before this Court.

41. In view of the aforesaid, I find no merit in the writ petition.

42. Dismissed. Interim order, if any, stands vacated.