
(2019) 12 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 732 Of 2019

Rajesh Kumar Jhanji	Vs	APPELLANT
State Of Himachal Pradesh And Others		RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 12 SHI CK 0005

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : M.L. Sharma, Vinod Thakur, Bhupinder Thakur, Narender Singh Thakur, Ram Lal Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. This writ petition has been filed claiming therein the following reliefs:

"1. To issue of a writ of mandamus or any other appropriate writ, order or direction directing the respondents to sanction Grant-in-Aid for the petitioner for the period he has worked on the post of Lecturer (Commerce) on PTA basis or for any other appropriate writ, order or direction in the fact and circumstances of the case.

2. To quash impugned order dated 03-01-2019 Annexure-P/7 being arbitrary, discriminatory and unconstitutional."

2. Evidently, the only ground raised by the petitioner to claim such relief is that the similarly situated persons have been granted the same relief. Reliance is sought to be placed on the judgments passed by learned Division Benches of this Court in CWP No. 2549 of 2015, titled as 'Hem Raj Sharma versus State of H.P. and others', decided on 07.08.2015, CWP No.2413 of 2017, titled as 'Kapil Chauhan versus State of H.P. and others', decided on 17.04.2018 and CWP No.

533 of 2019, titled as 'Surinder Kumar versus State of H.P. and others', decided on 19.09.2019.

3. However, learned counsel for the petitioner was not able to spell out any right under which he is entitled to the relief claimed and in fact what the petitioner is urging is a plea of negative parity which cannot be claimed and enforced in a Court of law as it is only a legal right that can be enforced in a Court of law.

4. Three Hon'ble Judges' Bench of the Hon'ble Supreme Court in Civil Appeal No. 7295 of 2019, titled as 'State of Odisha and another vs. Anup Kumar Senapati and another', decided on 16.09.2019, held as under:

"30. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of 1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed. In *Basawaraj and another v. Special Land Acquisition Officer*, (2013) 14 SCC 81, it was held thus:

"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. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. 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. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *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 and *Fuljit Kaur v. State of Punjab*, (2010) 11 SCC 455.)"

In *Chaman Lal v. State of Punjab and others*, (2014) 15 SCC 715, it was observed as under:

"16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone

inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in *Basawaraj v. Land Acquisition Officer*, (2013) 14 SCC 81 considered this issue and held as under: (SCC p. 85, para 8)

"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. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. 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. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *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 and *Fuljit Kaur v. State of Punjab*, (2010) 11 SCC 455.)"

In *Fuljit Kaur v. State of Punjab and others*, (2010) 11 SCC 455, it was observed thus:

"11. The respondent cannot claim parity with *D.S. Laungia v. State of Punjab*, AIR 1993 P & H 54, in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. 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 wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide *Coromandel Fertilizers Ltd. v. Union of India*, 1984 Supp SCC 457, *Panchi Devi v. State of Rajasthan*, (2009) 2 SCC 589 and *Shanti Sports Club v. Union of India*, (2009) 15 SCC 705)"

In *Doiwala Sehkari Shram Samvida Samiti Ltd. v. State of Uttaranchal and others*, (2007) 11 SCC 641, this Court in the context of negative equality observed thus:

"28. This Court in *Union of India v. International Trading Co.* has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

In *Bondu Ramaswamy and others v. Bangalore Development Authority and others*, (2010) 7 SCC 129, this Court observed thus:

"146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief.

But if under the rules or scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if, on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

In *Kulwinder Pal Singh and another v. State of Punjab and others*, (2016) 6 SCC 532, this Court while relying upon *State of U.P. v. Rajkumar Sharma*, (2006) 3 SCC 330, observed as under:

"16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In *State of U.P. v. Rajkumar Sharma*, (2006) 3 SCC 330 it was held as under (SCC p. 337, para 15)

"15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.*, (1996) 7 SCC 426; *Jaipur Development Authority v. Daulat Mal Jain*, (1997) 1 SCC 35; *State of Haryana v. Ram Kumar Mann*, (1997) 3 SCC 321; *Faridabad CT Scan Centre v. DG, Health Services*, (1997) 7 SCC 752; *Jalandhar Improvement Trust v. Sampuran Singh*, (1999) 3 SCC 494; *State of Punjab v.*

Rajeev Sarwal, (1999) 9 SCC 240; Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548; Union of India v. International Trading Co., (2003) 5 SCC 437 and Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority, (2006) 2 SCC 604.)"

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

In Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013) 5 SCC 427, this Court held as under:

"19. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Vide Sneh Prabha v. State of U.P., (1996) 7 SCC 426, Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548, State of W.B. v. Debasish Mukherjee, (2011) 14 SCC 187 and Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433.]"

In Arup Das and others v. State of Assam and others, (2012) 5 SCC 559, this Court observed as under:

"19. In a recent decision rendered by this Court in State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330, this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake."

In State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436, it was observed:

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by

mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Yogesh Kumar v. Govt. of NCT of Delhi, (2003) 3 SCC 548, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581, Krishan Bhatt v. State of J & K, (2008) 9 SCC 24, State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65 and Union of India v. Kartick Chandra Mondal, (2010) 2 SCC 422)"

5. Thus, from the aforesaid exposition of law, it is absolutely clear that in case an undue benefit has been conferred on someone inadvertently, it cannot be similarly granted to others. If a wrong is committed in an earlier case, it cannot be perpetuated.

6. In view of the aforesaid discussion, I find no merit in this writ petition and accordingly the same is dismissed.

Pending application, if any, also stands disposed of.