

(2014) 03 AHC CK 0102

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 43118 of 2000

Sada Nand Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2014) 4 ADJ 684

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Prakash Padia, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. Heard Sri Prakash Padia, learned counsel for the petitioners and Sri Saral Srivastava, learned Additional Chief Standing Counsel.

By means of the present writ petition, the petitioners are challenging the order dated 11.8.2000, annexure-12 to the writ petition, by which the claim of the petitioners for the wages for the period prior to the date of regularization has been denied.

Brief facts of the case are that the petitioners have been appointed as Lecturers on ad hoc basis on 22.10.1996 for a period of one year. The period of engagement has been subsequently extended for a period of another one year. The services of the petitioners have been regularized vide order dated 13.8.2002. When after the expiry of two years, the services of the petitioners have not been extended, the petitioners filed writ petitions, in which the interim order has been granted on 9.2.1999 and the petitioners have been allowed to continue. The said writ petitions have been disposed of vide order dated 18.5.1999 with the direction to the respondents to continue the petitioners on ad hoc basis till the regularly selected and appropriate candidates join the post. It is further observed that this arrangement shall not create any right in favour of the

petitioners. They will not be entitled to claim any lien on the post. In pursuance of the interim and final order passed by this Court in the aforesaid writ petitions, the petitioners have been allowed to continue and subsequently, their services have been regularized on 13.8.2002. However, since the services of the petitioners have not been extended, the petitioners could not work for the period 21.11.1998 to 18.2.1999. For the aforesaid period, the petitioners claimed salary, which has been denied.

2. Learned counsel for the petitioners submitted that some of the similarly situated Lecturers have been paid salary for the aforesaid period, therefore, petitioners should not be discriminated. He placed reliance on the Division Bench decision of Lucknow Bench of this Court in Service Bench No. 1034 of 2011, Vivek Kumar Saxena v. State of U.P. and others, decided on 10.10.2012.

3. Sri Saral Srivastava, learned Additional Chief Standing Counsel submitted that the petitioners had no enforceable right under any Rule to claim the salary for the period during which they have not worked before the regularization of their services. In the writ petition, no details have been furnished that to whom such benefits have been allowed. Only vague averments have been made. He further submitted that even assuming that in some of the cases, by mistake, salary has been paid but the same could not be treated as precedent. The petitioners are not legally entitled for the salary for the period during which they had not worked.

4. We have heard rival submissions and perused the record.

Admittedly, the petitioners were appointed as Lecturers on ad hoc basis on 22.10.1996 for a period of one year, which has been further extended for another period of one year. After the expiry of period of engagement, the engagement has not been further extended. The petitioners filed writ petition and on the basis of the interim order, the petitioners have been allowed to continue. Admittedly, the petitioners have not worked for the period 21.11.1998 to 18.2.1999. While disposing of the writ petitions, the Writ Court has directed to continue the petitioners on ad hoc basis till the regularly selected and appropriate candidates join the post and further observed that this arrangement shall not create any right in favour of the petitioners and they will not be entitled to claim any lien on the post. Therefore, no enforceable right has been given by the Writ Court and the status of the petitioners were only adhoc. The services of the petitioners have been regularized on 13.8.2002. No provision has been brought to our notice under which the petitioners are entitled for the salary for the period during which they have not worked.

5. In the circumstances, we are of the view that the petitioners are not entitled for the salary during which they have not worked.

So far as the claim of the petitioners that the similarly situated Lecturers have been given salary for the said period, therefore, the petitioners should not be discriminated, cannot be accepted. The petitioners have not given any such details and only vague averment has been made in the writ petition. It is settled

principle of law that merely because some benefits have been illegally provided to any person, the same cannot be treated as precedent and Article 14 of the Constitution of India does not apply and illegality cannot be perpetuated.

6. Reliance is placed on the decision of the Apex Court in the case of *Chanderpal v. NCT of Delhi and others* (supra), the Apex Court held as follows:

6.7. In *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, , the law operating in the field is stated in the following terms:

30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals others cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, , held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution, which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

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.

Again in *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, , this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.

In *State of Haryana and Others Vs. Ram Kumar Mann*, , this Court observed:

The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious

discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them i.e. benefit of withdrawal or resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetuate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality u/s 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make right.

6.9. Once it is found that the writ petitioners have indulged in such fraudulent activities rendering them unbecoming" of the members of the Police Force, their services were bound/liable to be terminated and no illegality can be said to have been committed by the respondents. If in some other cases, the appellate authority had taken a different view without adverting to the real issue, the same would not itself confer any legal right upon the writ petitioners herein to pray for a writ of or in the nature of Mandamus directing the respondents to reinstate in service following illegal order.

6.10. A writ of mandamus can be sought for by a person when there exists a legal right in himself and a corresponding legal obligation on the respondents.

Equality clauses enshrined in Articles 14 and 16 of the Constitution of India would apply only when the petitioner has been deprived of a legal right. A delinquent officer in no circumstance can base his claim invoking equality clause where its foundation is based on illegality.

He cannot be permitted to urge that although he is guilty of commission of a misconduct he should not be punished only because others have been let off either by mistake or otherwise.

No case, thus, has been made out to interfere with the impugned judgment of the Tribunal.

So far as question of quantum of punishment is concerned recently in *Om Kumar and Others Vs. Union of India*, it was held:

69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.

70. In this context, we shall only refer to these cases. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, this Court reiterated to "proportionality" in the

quantum of punishment but the Court observed that the punishment was shockingly disproportionate to the misconduct proved. In *B.C. Chaturvedi Vs. Union of India and others*, , this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, .

71. Thus, from the, above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to *Wednesbury* principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.

In the case of *State of Haryana and others v. Ram Kumar Mann (supra)*, the Apex Court held as follows:

3. The question, therefore, is whether the view taken by the High Court is correct in law. It is seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on 18-5-1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on 18-5-1982. It may be that the Government for their own reasons, had given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality u/s 14 for reinstatement? The answer is obviously "No". In a converse

case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to equality treatment for enforcement thereof, A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits.

So far as aforesaid decision of the Lucknow Bench of this Court is concerned, we are of the view that it is based on its own fact and does not apply.

For the aforesaid reasons stated above, the writ petition is devoid of merit and is, accordingly, dismissed.