

(2005) 11 AHC CK 0163

Allahabad High Court

Case No: Special Appeal No. 670 of 2005

Hamidudin

APPELLANT

Vs

State of U.P. and Director of
Education

RESPONDENT

Date of Decision: Nov. 9, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2006) 5 AWC 4514

Hon'ble Judges: Sudhir Agarwal, J; S. Rafat Alam, J

Bench: Division Bench

Advocate: S.D. Kautilya, for the Appellant; C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal, under the Rules of the Court, is preferred against the judgment of the Hon'ble Single Judge dated 22.8.2005 in writ petition No. 24108 of 2004.

2. The petitioner claims that he was working as a principal in Basic Teachers Training College, Varanasi and attained the age of superannuation on 31.3.2000. However, in the year 1999 his name was recommended for State Teacher's Award, which was ultimately conferred upon him vide Government Order dated 18.9.2000. The contention of the appellant is that in accordance with Government Order dated 6.5.1982 the teachers, who have been conferred with the State Teacher's Award for teaching and are physically and mentally fit, are entitled to be given two years extension of service but such extension of service was not given to him although he has been conferred upon such award for the year 1999.

We have heard learned counsel for the parties.

3. It is not disputed that the said award was conferred upon the petitioner on 18.9.2000 although he attained the age of superannuation on 31.3.2000 i.e. after

about six months from the date the petitioner attained the age of superannuation. The term extension means enlargement, expansion, lengthen, prolong etc., which is permissible only when an incumbent is already in service but after he has ceased to be the holder of the post and is not in service, he cannot claim extension, since the question of extension does not apply in such case. The issue has been considered in detail by the Hon"ble Single Judge and we do not find any reason to take different view in this matter.

4. It is further submitted that other teachers, who have been conferred upon the State Teacher's Award after attaining the age of superannuation, have been allowed extension and, therefore, the petitioner is also entitled for similar treatment.

5. This contention of the petitioner is fallacious and cannot be accepted. As we have held, once the incumbent has attained the age of superannuation the question of extension of service would not arise as the extension presupposes that the person is already not in service. The contention of the appellant that, other teachers, who are similarly situated to the appellant, have been allowed continuance in service after conferment of State Teacher Award, such action of the respondents cannot be said to be in accordance with law and ex facie illegal. Merely because the respondents have done some thing illegal in some other case the Court cannot be a party in directing the authorities to commit same illegality in another mailer. Article 14 of the Constitution of India is not applicable for contending that the parity of illegal act should be extended. If some person has derived benefit illegally, similarly circumstanced others cannot claim same benefit on the ground of equality, as that could amount to perpetuating illegal act through judicial process, which is not permissible through a Court of law. Judicial process cannot be used to perpetuate illegality. Article 14 of the Constitution of India can be applied where a citizen has legal and valid right enforceable at law and if similar valid and legal right has been conferred upon some other persons to deny to particular person, the parity can be claimed but not otherwise.

6. In Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions Punjab and Anr. 1995 SCC 706 it was held as under: -

3. It is next contended that along with the appellant two more candidates were selected and were appointed and their appointments were upheld by the High Court. Denial to her is violative of Article 14 of the Constitution. We find no force in the contention. The view of the High Court is obviously illegal and the judgment rendered would not form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidates though illegally appointed. Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of the orders....

7. In the case of [Chandigarh Administration and another Vs. Jagjit Singh and another](#), the Hon"ble Supreme Court held in para 8 as under: -

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....

9. In the case of *B. Rama Rao v. Government of Andhra Pradesh*, (1995) Supp. 1 SCC 153 the Hon'ble Supreme Court observed as follows: -

4...No doubt the Tribunal had interpreted the rules wrongly and given the benefit to the petitioner therein. That would not be a ground to extend the same principle to the appellant. His contention that he is invidiously discriminated which offends Article 14, is devoid of substance. Any wrong order or a negative benefit given to an employee or non-action by the employer to remedy the same illegality would not be a ground to extend the illegal benefit to the person similarly situated....

10. In the case of [Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others](#), the Hon'ble Supreme Court in para 14 of the judgment already held as under: -

14 The so called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same.

24...Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. " Such person cannot be discriminated to deny the same benefit. The rational relationship and, legal back up

are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar person cannot plead, nor the court can, countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. 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 legalised. 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.

11. Similarly in the case of [Arikaravula Sanyasi Raju Vs. Branch Manager, State Bank of India, Visakhapatnam \(Andhra Pradesh\) and others](#), the Hon"ble Apex Court held as under: -

Merely because, on a wrong advise, another employee was given pension after removal from service, the same cannot be made a ground under Article 14 to perpetuate the same mistake. So, Article 14 does not apply and no discrimination arises.

12. Same view was expressed by the Hon"ble Apex Court in the case of [C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain](#), and [Narpat Singh etc.etc. Vs. Jaipur Development Authority and Another](#), .

13. We are, therefore, of the view that the Hon"ble Single Judge has considered "all these aspects of the matter and has taken a correct view, which do not require any interference in the present appeal.

14. In the result, the special appeal is dismissed. No order as to costs.