THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.5147/2019
Smt. Gomati Bai Vs. State of M.P. and others

Gwalior, Dated :02/04/2019

Shri B.P. Singh, Advocate for petitioner.

Shri Anand V. Bhardwaj, Government Advocate for respondents/State.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

> "(i) That, a direction may kindly be given to the respondents to modify the order Annexure P-1 and to extend the benefit of increments, house rent and other service benefits as has been given to Shri Pavan Kumar Jain and Shri Girwar Singh Kushwaha.
> (ii) Any other relief, which this Hon'ble Court may deem fit and proper, may also be given to the petitioner."

2. It is submitted by the counsel for the petitioner that the petitioner was granted appointment on compassionate ground after the death of her husband. Initially she was appointed on daily wages on the post of Water-woman and thereafter by order dated 31/12/2004 she was classified on the post of Water-woman. Thereafter, by order dated 14/9/2011 appointment of the petitioner was declared as illegal, which was challenged by the petitioner before this Court by filing writ petition No.8239/2011. The said writ petition was allowed by order dated 14/12/2011 in the light of the order passed by this Court in writ petition No.7994/2011. It is submitted that against the order

dated 14/12/2011 passed in Writ Petition No.8239/2011 the State Government filed a Writ Appeal, which was dismissed and the SLP was also dismissed. It appears that since the petitioner was not satisfied with the arrears of pay paid by the respondents, therefore, she filed a Contempt Petition, which was registered as Conc. No.289/2012 and was disposed of by this Court by order dated 12/5/2017 with the following observations:-

> "Learned counsel for the respondents has filed compliance report dated 11/05/2017 in which it is mentioned that petitioner was earlier paid a sum of Rs.3,98,143/- towards difference of pay scale from 31/12/2004. It is petitioner's case that she was entitled for arrears from 01/03/1995 to 30.12.2004. Now vide order dated 09/05/2017 as a result of classification w.e.f 01/03/1995 petitioner has been paid a sum of Rs.1,81,135/- as difference of arrears w.e.f. 01/03/1995 to 30/12/2012. Therefore, nothing survives for adjudication in this case. However, if there is any difference in the calculation, petitioner will be free to raise the issue by making an appropriate application for revival of this contempt petition.
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> Accordingly, this petition is disposed of. Further, she will be free to challenge the same by filing the fresh petition."

3. It is submitted by the counsel for the petitioner that in fact the similarly situated persons have been granted the benefit of regular pay scale alongwith annual increments, house rent, time scale, which is being given to the regular employees and the same benefit has not been extended to the petitioner, whereas her case is squarely covered

by the case of co-employees. Thus, it is submitted that the State should act as a model employer and should not discriminate.

4. *Per contra,* it is submitted by the counsel for the State that after the quashment of the order of discontinuation of the services of the petitioner, the natural consequence was that the order of classification dated 31/12/2004 again got revived and, therefore, the factual position is that the petitioner was classified as Water-woman by order dated 31/12/2004. The Supreme Court in the case of **Ram Naresh Rawat vs. Ashwini Ray & Others:[(2017) 3 SCC 436],** has held as under:-

> "21. It is, thus, somewhat puzzling as to whether the employee on getting the designation of 'permanent employee' can be treated as 'regular' employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as 'permanent employee' would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as 'permanent employee'. Moreover, this Court has, as would be noticed now, drawn a distinction between 'permanent employee' and 'regular employee'.
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> 22. We may mention, at this stage that this aspect has come up for consideration, in another context, in State of Madhya Pradesh and Others Vs. Dilip Singh Patel and Others. That was a case where similarly situated employees, who were classified as 'permanent employees' under the Standing Orders Act, were given minimum of the pay scale attached to their posts. However, after the implementation of

Sixth Pay Commission, benefits thereof were not extended to these employees. High Court held that they would be entitled to have their pay fixed as per the revised scales in accordance with the recommendations of Sixth Pay Commission which were accepted qua regular employees. This Court, though, upheld the orders of the High Court giving them the benefit of revision of pay-scale pertained to Sixth Pay Commission, but at the same time made it clear that they would be entitled to minimum salary and allowances as per the said revised scales and would not be entitled to any increments. It was further held that such increments would be admissible only after regularization of their services which regularization was to take placed as per seniority list with due procedure. Following passage from the said judgment, which captures the aforesaid directions, is quoted hereunder:

> "we have heard learned counsel for the parties and perused the records. It appears that the respondents earlier moved before the Administrative Tribunal, Gwalior by filing original applications such as O.A. No. 648 of 1995, O.A. No. 293 of 1991 etc. in compliance of the orders passed in such original applications, the Chief Engineer, Yamuna Kachhar Water Resources Department, Gwalior (M.P.) (by order issued in between April 2004 and June, 2004 provided the minimum wages and allowances to the respondents without increment as per the Schedule of the pay scale from the date of the order of the Tribunal. It was further ordered that the regularization of the daily wages employees shall be made as per the seniority list with due procedure and the benefit of increment and other benefits can only be granted after the regularization as per the Rules. It was ordered that the order of the Court for benefit of minimum wages and allowances shall be.....
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> From the aforesaid facts, it is clear that the respondents are entitled for minimum wages and allowances as per the fixed Schedule of the pay

> scale but without any increment. In such cases, if the pay scale is revised from time to time including the pay scale as revised pursuant to Sixth Pay Commission, the respondents will be entitled to minimum wages and allowances as per the said revised scale, without increment. Only after regularization of their service, as per seniority and rules, they can claim the benefit of increment and other benefits."

The contempt case was disposed of in the following terms:-

> "It is also apprised by the learned counsel for the respondents that in similar Contempt Case No.891/2015, Coordinate Bench of this Court wherein one of us (A.K. Joshi, J.) was a member and disposed of contempt case in terms of the decision by the Supreme Court in the case of **Ram Naresh Rawat** (supra). As the issue as regard to grant of pay sale after being classified as “permanent” under the Statutory Standing Order has been settled at (Balram Vs. Shri Pramod Agrawal & others) rest with the decision in Ram Naresh Rawat (supra), we are inclined to dispose of the contempt petition in terms of order passed in Ram Naresh Rawat (supra) and direct the respondents to consider and settle the claim of the petitioner in terms of decision rendered by the Supreme Court in Ram Naresh Rawat (supra) within a period of three months from the date of communication of this order."

5. Accordingly, the petitioner has been granted the lowest pay scale without any increment and if by mistake a benefit has been extended to an employee, for which he is not entitled, then the principle of negative equality cannot be applied and the petitioner cannot be granted the same benefit.

6. In reply, it is submitted by the counsel for the petitioner that

the judgment passed in the case of **Ram Naresh Rawat (supra)** has been passed recently and, therefore, it does not have a retrospective operation.

7. Heard learned counsel for the parties.

8. So far as retrospective operation of the judgment passed by the Supreme Court in the case of **Ram Naresh Rawat (supra)** is concerned, suffice it to say that the principle of prospective overruling is not applicable in India.

The Supreme Court in the case of **Sarwan Kumar and Another Vs. Madan Lal Aggarwal** reported in **(2003) 4 SCC 147** has held as under:-

> **"15.** For the first time this Court in *Golak Nath* v. *State of Punjab* accepted the doctrine of "prospective overruling". It was held: (AIR p. 1669, para 51)
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> > "*51*. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (*1*) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (*2*) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (*3*) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of

> the cause or matter before it."
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> The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding *Gian Devi Anand case* did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand case* would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in *Gian Devi Anand case* or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in *Gian Devi Anand case* by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous."

The Supreme Court in the case of **M.A. Murthy Vs. State of Karnataka and Others** reported in **(2003) 7 SCC 517** has held as under:-

> **"8.** The learned counsel for the appellant submitted that the approach of the High Court is erroneous as

the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *L.C. Golak Nath* v. *State of Punjab*. In *Managing Director, ECIL* v. *B. Karunakar* the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta* v. *State of U.P.* and *Baburam* v. *C.C. Jacob*.) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma case No. II*. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the

> subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

The Supreme Court in the case of **K. Madhava Reddy and Others Vs. State of Andhra Pradesh and Others** reported in **(2014) 6 SCC 537** has held as under:-

> **"10.** We have heard the learned counsel for the parties at length. The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in *Golak Nath* v. *State of Punjab*, with this Court proceeding rather cautiously in applying the doctrine, was conscious of the fact that the doctrine had its origin in another country and had been invoked in different circumstances. The Court sounded a note of caution in the application of the doctrine to the Indian conditions as is evident from the following passage appearing in *Golak Nath case* wherein this Court laid down the parameters within which the power could be exercised. This Court said: (AIR p. 1669, para 51)
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> "*51*. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (*1*) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (*2*) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (*3*) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the

justice of the cause or matter before it."

11. It is interesting to note that the doctrine has not remained confined to overruling of earlier judicial decision on the same issue as was understood in *Golak Nath case*. In several later decisions, this Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. For instance in *India Cement Ltd.* v. *State of T.N.*, this Court not only held that the levy of the cess was ultra vires the power of the State Legislature brought about by an amendment to the Madras Village Panchayat Amendment Act, 1964 but also directed that the State would not be liable for any refund of the amount of that cess which has been paid or already collected. In *Orissa Cement Ltd.* v. *State of Orissa*, this Court drew a distinction between a declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof. This Court held that it was open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way so as to advance the interest of justice.

12. Reference may also be made to the decision of this Court in *Union of India* v. *Mohd. Ramzan Khan* where non-furnishing of a copy of the enquiry report was taken as violative of the principles of natural justice and any disciplinary action based on any such report was held liable to be set aside. The declaration of law as to the effect of non-supply of a copy of the report was, however, made prospective so that no punishment already imposed upon a delinquent employee would be open to challenge on that account.

13. In *Ashok Kumar Gupta* v. *State of U.P.*, a three-Judge Bench of this Court held that although *Golak Nath case* regarding unamendability of fundamental rights under Article 368 of the Constitution had been overruled in *Kesavananda Bharati* v. *State of Kerala* yet the doctrine of prospective overruling was upheld and followed in

several later decisions. This Court further held that the Constitution does not expressly or by necessary implication provide against the doctrine of prospective overruling. As a matter of fact Articles 32(4) and 142 are designed with words of width to enable the Supreme Court to declare the law and to give such directions or pass such orders as are necessary to do complete justice. This Court observed: (*Ashok Kumar Gupta case*, SCC pp. 246-47, para 54)

"*54*. … So, there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of law, as declared, to the future and save the transactions, whether statutory or otherwise, that were effected on the basis of the earlier law. This Court is, therefore, not impotent to adjust the competing rights of parties by prospective overruling of the previous decision in *Rangachari* ratio. The decision in *Mandal case* postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective overruling following the principle evolved in *Golak Nath case*."

14. Dealing with the nature of the power exercised by the Supreme Court under Article 142, this Court held that the expression "*complete justice*" are words meant to meet myriad situations created by human ingenuity or because of the operation of statute or law declared under Articles 32, 136 or 141 of the Constitution. This Court observed: (*Ashok Kumar Gupta case*, SCC pp. 250-51, para 60)

"*60*. … The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase

'complete justice' engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise."

15. In *Somaiya Organics (India) Ltd.* v. *State of U.P.*, this Court held that the doctrine of prospective overruling was in essence a recognition of the principle that the court moulds the relief claimed to meet the justice of the case and that the Apex Court in this country expressly enjoys that power under Article 142 of the Constitution which allows this Court to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before this Court. This Court observed: (SCC p. 532, para 27)

"*27*. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to 'pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it'. In exercise of this power, this Court has often denied the relief claimed despite holding in

> the claimants' favour in order to do 'complete justice'."
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> **16.** The "doctrine of prospective overruling" was, observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law."

The Supreme Court in the case of **B.A. Linga Reddy and others Vs. Karnataka State Transport Authority and others** reported in **(2015) 4 SCC 515** has held as under:-

> **34.** The view of the High Court in *Ashrafulla* has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in *P.V. George* v. *State of Kerala* held that the law declared by a court will have a retrospective effect if not declared so specifically. Referring to *Golak Nath* v. *State of Punjab* it had also been observed that the power of prospective overruling is vested only in the Supreme Court and that too in constitutional matters. It was observed: (*P.V. George case*, SCC pp. 565 & 569, paras 19 & 29)
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> "*19*. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.
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> *29*. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench,

therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."

35. In *Ravi S. Naik* v. *Union of India*, it has been laid down that there is retrospective operation of the decision of this Court. The interpretation of the provision becomes effective from the date of enactment of the provision. In *M.A. Murthy* v. *State of Karnataka*, it was held that the law declared by the Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this normal rule. It was held thus: (*M.A. Murthy case*, SCC pp. 520-21, para 8)

"*8*. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *Golak Nath* v. *State of Punjab*. In *ECIL* v. *B. Karunakar* the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta* v. *State of U.P.* and *Baburam* v. *C.C. Jacob*.)

> It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma case*. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

The Supreme Court in the case of **P.V. George Vs. State of Kerala** reported in **(2007) 3 SCC 557** has held as under :

> "27. The rights of the appellants were not determined in the earlier proceedings. According to them, merely a law was declared which was prevailing at that point of time; but the appellants were not parties therein. Thus, no decision was rendered in their favour nor any right accrued thereby."

Thus, it is clear that the principle of prospective overruling would not apply in respect of the judgment passed by the Supreme

Court unless and until it is expressly so mentioned in the judgment. Furthermore, there cannot be an estoppel against the statute.

The Supreme Court in the case of **Bengal Iron Corpn. v. CTO** reported in **1994 Supp (1) SCC 310** has held as under:-

> **"18.** …..... There can be no estoppel against the statute. …..... Law is what is declared by this Court and the High Court — to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean. (See *Sanjeev Coke Mfg. Co.* v. *Bharat Coking Coal Ltd.*)"

Thus, where the question of law has been settled by the Courts, then it has to be held that the said question of law was in existence right from day one.

9. Thus, it has to be held that the judgment passed by the Supreme Court in the case of **Ram Naresh Rawat (supra)** would apply to all those cases where the litigation is still pending. Under these circumstances, it cannot be said that the grant of lowest pay scale without any increment by the respondents is bad in law.

10. So far as the grant of regular pay scale with other emoluments to the co-employees is concerned, this Court is of the considered opinion that by applying the principle of negative equality no such benefit can be extended to the petitioner.

The Supreme Court in the case of **Mangalam Organics Limited Vs. Union of India** reported in **(2017) 7 SCC 221** has held as under:-

> **"41.** Examination of the matter in the aforesaid perspective would provide an answer to most of the arguments of the appellants. It would neither be a case of discrimination nor can it be said that the appellants have any right under Article 14 or Article 19(1)(*g*) of the Constitution which has been violated by non-issuance of notification under Section 11-C of the Act. Once the appellant accepts that in law it was liable to pay the duty, even if some of the units have been able to escape payment of duty for certain reasons, the appellant cannot say that no duty should be recovered from it by invoking Article 14 of the Constitution. It is well established that the equality clause enshrined in Article 14 of the Constitution is a positive concept and cannot be applied in the negative."

The Supreme Court in the case of **Union of India and another Vs. International Trading Co. and another** reported in **(2003) 5 SCC 437** has held as under:-

> **"13.** What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another

> wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

The Supreme Court in the case of **Doiwala Sehkari Shram Samvida Samiti Ltd. Vs. State of Uttaranchal and others** reported in **(2007) 11 SCC 641** has held as under**:-**

> "**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."

The Supreme Court in the case of **Vishal Properties (P) Ltd.**

Vs. State of U.P. and others reported in **(2007) 11 SCC 172** has held as under:-

> "**13.** Even otherwise, Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality. Therefore, we are not bound to direct any authority to repeat the wrong action done by it earlier. In *Sushanta Tagore* v. *Union of India* this Court rejected such a contention as sought to be advanced in the present case by observing: (SCC pp. 28-29, para 36)
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> > "*36*. Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality."
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> **14.** This view also finds support from the judgments of this Court in *Sneh Prabha* v. *State of U.P.*, *Secy., Jaipur Development Authority* v. *Daulat Mal Jain*, *State of Haryana* v. *Ram Kumar Mann* and *Faridabad CT Scan Centre* v. *D.G. Health Services*.
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> **15.** In *Financial Commr. (Revenue)* v. *Gulab Chand* this Court rejected the contention that as other similarly situated persons had been retained in service, persons senior to the petitioner could not have been discharged during the period of probation observing that even if no action had been taken in similar situation against similarly situated persons then too it did not confer any legal right upon the petitioner.
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> **16.** In *Jalandhar Improvement Trust* v. *Sampuran Singh* and *Union of India* v. *Rakesh Kumar* this Court held that courts cannot issue a direction that the same mistake be perpetuated on the ground of

discrimination or hardship.

17. Any action/order contrary to law does not confer any right upon any person for similar treatment. (See *State of Punjab* v. *Dr. Rajeev Sarwal*; *Yogesh Kumar* v. *Govt. of NCT, Delhi*; *Union of India* v. *International Trading Co.* and *Anand Buttons Ltd.* v. *State of Haryana*.)

18. Recently in *State of Kerala* v. *K. Prasad* it was inter alia held as follows: (SCC p. 147, para 14)

> "*14*. Dealing with such pleas at some length, this Court in *Chandigarh Admn.* v. *Jagjit Singh* has held that: (SCC p. 750, para 8)
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> '*8. … 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 [under Article 226] cannot be exercised for such a purpose.'
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> This position in law is well settled by a catena of decisions of this Court. (See *Secy., Jaipur Development Authority* v. *Daulat Mal Jain* and *Ekta Shakti Foundation* v. *Govt. of NCT of Delhi*.) It would, thus, suffice to say that an order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities."

11. Accordingly, this Court is of the considered opinion that the petition sans merits and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*