IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 14th OF SEPTEMBER, 2022

WRIT PETITION NO. 6309 OF 2006

Between:-

SURYA KUMAR KOKATE S/O SHRI K.R. KOKATE, AGED 57 YEARS, OCCUPATION AT PRESENT UN-EMPLOYED, R/O 137, LAL BAGH ROAD, GUNA, MADHYA PRADESH

…....PETITIONER

(BY SHRI RAGHVENDRA DIXIT – ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH THE SECRETARY TO THE GOVERNMENT OF M.P. SCHOOL EDUCATION DEPARTMENT, MANTRALAYA, VALLABH BHAWAN, BHOPAL**

2. **THE COMMISSIONER, PUBLIC INSTRUCTION, MADHYA PRADESH, BHOPAL**

3. **DISTRICT EDUCATION OFFICER, DISTRICT GWALIOR, MADHYA PRADESH**

4. **PRATAP SHIKSHA SAMITI, LASHKAR, GWALIOR THROUGH THE SECRETARY OFFICE – PRATAP HIGHER SECONDARY SCHOOL, MATA BALI GALI, LASHKAR, GWALIOR, MADHYA PRADESH**

…....RESPONDENTS

(SHRI A.K. NIRANKARI – GOVERNMENT ADVOCATE FOR STATE)

This petition on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226/227 of the Constitution of India has been filed seeking following relief:-

> It is, therefore, humbly prayed that this petition may kindly be allowed and the order of the Disciplinary Authority contained in Annexure P/12 and the order of Appellate Authority contained in Annexure P/17 may kindly be declared as illegal and void and may kindly be quashed alongwith whole illegal proceedings of enquiry. The Respondents may kindly be directed to reinstate the petitioner in his own post alongwith all back wages from the date of suspension.
> It is further prayed that in the facts and circumstances of the case, the respondents may kindly be directed to pay cost Rs.5000/- to the petitioner. Any other suitable relief which this Hon'ble Court may deem fit be also awarded.

2. It is the case of the petitioner that the petitioner was working as Upper Division Teacher (UDT) in Pratap Higher Secondary School, Lashkar Gwalior. On the allegation of misbehaviour with the Principal Sarnam Singh, by order dated 12.05.1994 respondent No. 4 placed the petitioner under suspension and also lodged an FIR in the police station. Thereafter, charge-sheet was issued by the respondent No. 4 containing 20 charges. Copy of the charge-sheet has been placed on record. It is the case of the petitioner that charge Nos. 1 to 11 pertains to the years 1974 to 1988. Regarding charge Nos. 12 to 17, no day, date of incident were mentioned in the charge-sheet. So far as charge No. 18 is concerned, the

petitioner has already been acquitted by the Trial Court and, therefore, charge Nos. 19 and 20 have been levelled in violation of the rules and laws. The petitioner was never supplied with the list of witnesses as well as list of documents. Shri S.D. Sharma, Principal Government Higher Secondary School, Bhind was appointed as Inquiry Officer and Shri Sarnam Singh Yadav (complainant), Principal Pratap Higher Secondary School, Gwalior was appointed as Presenting Officer. It is the case of the petitioner that Sarnam Singh Yadav could not have been appointed as Presenting Officer because not only, he was the complainant, but he has also lodged the FIR against the petitioner. Sarnam Singh Yadav also appeared as a witness in the departmental inquiry, therefore, it is clear that the Presenting Officer, who not only was the complainant but had also appeared as a witness. Neither the disciplinary authority nor the Inquiry Officer supplied the documents and whatever documents were supplied to the petitioner, were totally illegible, therefore, the petitioner submitted an application dated 24.10.1994 to the respondent No. 4 for supply of legible documents. However, again illegible documents were supplied. The petitioner submitted his reply to the charge-sheet on 12.12.1994 and submitted that the misconduct already disposed of or waived for any reason cannot be revived. The petitioner denied the charges levelled from Serial Nos. 1 to 17 which were 15 to 18 years old. The Inquiry Officer and Presenting Officer did not provide opportunity of hearing and accordingly, the petitioner submitted a representation dated 12.12.1994 to the respondent No. 3. He also requested for providing him the defence assistance. The petitioner further made representations to the respondent No. 3 on 13.12.1994 and 21.01.1995

and prayed that on the basis of M.P. Government Gazette dated 18.05.1997, an employer shall not be competent to initiate the proceedings against an employee for major misconduct after one year and for a minor misconduct after six months of its commission and it was prayed that charges Nos. 1 to 18 be deleted from the charges and modified charge-sheet may be provided. The petitioner had also given specific examples of corrupt practices by Inquiry officer and requested to change the same as he was not fair and impartial. The Inquiry Officer Shri Satyadev Sharma was an old friend of Shri Sarnam Singh Yadav, Presenting Officer. He deliberately joined hands with the Presenting Officer Sarnam Singh and, accordingly, he indulged himself in unfair inquiry proceedings. The petitioner also submitted a representation dated 13.02.1995 to the respondent No. 3 to change the Inquiry officer, but nothing was done and accordingly, the petitioner was removed from service by order dated 21.06.1995. Against the order of removal, the petitioner preferred an appeal, which too has been dismissed by order dated 09.09.2005 which was received by the petitioner on 08.10.2005.

3. The respondents have filed their return and claimed that the order of punishment has been passed after following due procedure of law. Ample opportunity of hearing was given. It is submitted that against the order of termination, the petitioner had preferred an appeal, which was dismissed by order dated 10.11.2000 by holding that no illegality was committed by the competent authority. The said order was challenged by the petitioner by filing W.P. No.276/2001 and the said petition was partially allowed by this Court by order dated 23.09.2004 and the order dated 10.11.2000 was set aside and the matter was remanded back to

decide the appeal afresh. Accordingly, in compliance of order dated 23.09.2004, the Commissioner, Public Instructions reconsidered the case of the petitioner and also afforded opportunity of hearing. The petitioner also appeared before the Appellate Authority and submitted his written arguments. The Appellate Authority after considering the material available on record as well as considering the arguments advanced by both the parties reached to the conclusion that services of the petitioner have been rightly terminated.

4. It is the contention of the counsel for the petitioner that the petitioner had never assailed the order of appointment of Inquiry Officer and Presenting Officer. No objection was raised with regard to supply of relevant documents.

5. Considered the submissions made by the counsel for the parties.

6. Although various grounds have been raised by the petitioner in this petition, but this Court is of the considered opinion that it would not be necessary to adjudicate all the grounds raised by the petitioner.

7. The petitioner has claimed that he had objected to the appointment of Inquiry Officer and Presenting Officer, whereas it is the case of the respondent that no objection with regard to the appointment of the Inquiry Officer and Presenting Officer was raised.

8. Without entering into any controversy as to whether the petitioner had raised any objection to the appointment of Inquiry Officer and Presenting Officer, this Court is of the considered opinion that it is clear from the charge No. 18 that the petitioner was alleged to have abused and threatened Principal Shri Sarnam Singh Yadav and also interfered with his official duties and thus, it was alleged that by misbehaving with the

senior officer, the petitioner has violated the Employee Conduct Code. Thus, it is clear that the respondents were well aware of the fact that one of the charge is with regard to misbehaviour with Sarnam Singh Yadav. It is the case of the petitioner that the FIR was also lodged by Sarnam Singh Yadav in this regard. It is also the case of the petitioner that Sarnam Singh Yadav has appeared as a witness in the inquiry. The factum of appearance of Sarnam Singh Yadav as a witness in the inquiry has not been denied by the respondents.

9. Now the question for consideration is as to whether a complainant /a witness can act as a Presenting Officer or not ?

10. Counsel for the petitioner has relied upon the judgment passed by the Calcutta High Court in the case of **Pradip Kumar Chatterjee Vs. State of West Bengal and others** reported in **(1997) 2 CALLT 4 HC**, judgment passed by the Madras High Court in the case of **S. Duraikannu Vs. The Managing Director and another** decided on **12.09.2006** passed in **W.P. No.40509/2002** and the judgment passed by the Calcutta High Court in the case of **Bharat Coking Coal Ltd. and another vs. Surendra Pratap Narayan Singh and others** reported in **2004 ILLJ 498 Cal.**

11. Per contra, counsel for the State has relied upon the judgment passed by Full Bench of Calcutta High Court in the case of **S.V.S. Marwari Hospital Vs. State of West Bengal and others** reported in **AIR 2015 Calcutta 82** and submitted that mere participation of Presenting Officer as a witness in domestic inquiry is not contrary to the principle of natural justice and does not render an inquiry or the entire proceedings inoperative or without jurisdiction in the absence of proof of

prejudice to the concern employee.

12. Heard the learned counsel for the parties.

13. The Presenting Officer participates in the departmental inquiry as a representative of the disciplinary authority. The departmental documents are also in the custody of the Presenting Officer. The Presenting Officer should also be free from any bias and should not give an apprehension in the mind of delinquent officer that the Presenting Officer may play the game of hide and seek. It is true that there are no rules which regulate the duty of the Presenting Officer, but it does not allege that the Rules of natural justice can be given go bye. It is the duty of the Presenting Officer to uphold the interest of the disciplinary authority by all fear and honourable means. Therefore, the Supreme Court in the case of **Kokkanda B. Poondacha and others v. K.D. Ganapathi and another** reported in **(2011) 12 SCC 600** has held that if an Advocate has a reason to believe that he will be a witness in the case, the Advocate should not accept brief or appear in the case. It is well established principle of law that no one can be a Judge of his own cause. As per charge No. 18, the Presenting officer himself was the complainant because the allegations were that the petitioner had misbehaved with Sarnam Singh. It is the case of the petitioner that Sarnam Singh had also lodged the FIR in respect of the same incident. Sarnam Singh had also appeared as a witness while discharging his duties as a Presenting Officer. The moment when a person appears as a witness, then he is also entitled to be cross-examined by the opposite party. While arguing the matter finally before the Inquiry Officer, Presenting Officer cannot justify his own testimony. The Gujarat High Court in the case of **Gohel Himatsingh Lakhaji Vs. Patel Motilal**

Garbardas and others reported in **(1965) 6 GLR 531** has held as under:-

> **8.** The principle underlying these authorities seems to be the well settled maxim that justice should not only be done but manifestly and undoubtedly seem to be done. The lawyar acts as an officer of the Court and he is duty bound to help the administration of justice. He is duty bound to answer all questions to the Court and to make statement of facts on which the Court must implicitly rely. These duties which are inherent in this noble profession both towards the Court and towards his client can be performed independently and fearlessly with a dispassionate; approach only if the lawyer plays an independent role as the officer of Court helping the administration of justice. As Lord Westbury put it even in civil litigation the lawyer cannot be allowed to appear as counsel in his own cause on the principle that there cannot be a mixture of two legal characters. The reasoning would apply with a still greater force where in a criminal trial the lawyer who is an accused person himself wants to appear in the same cause in the trial of the same offence and which arose out of the same transaction for his other co-accused. He can never remain unconcerned or indifferant to the cause in such a case for such a trial is bound to result in embarrassment. Mr. Thakore rightly pointed to out the provision of Section 342 of the Code of Criminal Procedure. Section 342 is as under:
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> > (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court may at any stage of any inquiry or trial without previously warning the accused put such questions to him as the Court considers necessary and shall for the purpose aforesaid question him generally on the case after the witness for the prosecution have been examine and before he is called on for his defence.
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> > Under Sub-section (2) the accused does not incur

> any liability to punishment by refusing to answer such questions or by giving even false answers to them. How could any lawyer in such circumstances play both the roles consistently with his duties and without the trial being embarrassed at every stage? Similarly how could the Court at every stage maintain the distinctions between the various accused so that the statement of one accused is not in any way being utilised against the other? In the particular case in question where the lawyers appearing for the co-accused are being jointly tried for putting defamatory questions along with their clients as the co-accused the embarrassment is inherent in the situation as it could be open to the clients at any stage to plead that no such instructions were given to the lawyer concerned to put such questions. The fair trial of the accused would be hampered and even the lawyer himself would be embarrassed in the faithful discharge of his duties. The principle evolved by the House of Lords that a person cannot be both party and counsel is thus really embedded in the fundamental principles of the administration of justice and for maintaining the highest traditions of the bar and the legal profession. When the Court precludes an advocate to appear in a criminal trial where he is the co-accused it does so only in the Interests of ensuring a fair trial to the accused without any embarrassment to the advocate or to the other accused persons or to the Court so as to leave no room for suspicion for what is more fundamental is that justice must not only be done but must also seem to be done.

14. The Presenting Officer has a duty to be discharged by him in the inquiry and in case, if he appears as a complainant and witness, then there is every possibility of bias as his primary concern would be to ensure that the guilty of the delinquent officer is proved by hook and crook. Even otherwise, if the respondents had appointed Shri Sarnam Singh Yadav, then still the Inquiry Officer should have looked into this

matter and should have forbidden Shri Sarnam Singh to act as a Presenting Officer. In the case of **Emperor Vs. Dadu Rama Surde** reported in **AIR 1939 Bombay 150**, it has been held as under:-

> "The question whether the Court has jurisdiction to forbid an advocate to appear in a particular case involves the consideration of conflicting principles. On the one hand, an accused person is entitled to select the advocate whom he desires to appear for him, and certainly the prosecution cannot fetter that choice merely by serving a subpoena on the advocate to appear as a witness. On the other hand, the Court is bound to see that the due administration of justice is not in any way embarrassed. Generally, if an advocate is called as a witness by the other side, it can safely be left to the good sense of the advocate to deter mine whether he can continue to appear as an advocate, or whether by so doing he will embarrass the Court or the client. If a Court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate, who has been called as a witness by the other side, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw, in my opinion in such a case the Court has inherent jurisdiction to require the advocate to withdraw. An advocate cannot cross-examine himself, nor can he usefully address the Court as to the credibility of his own 'testimony, and a Court may well feel that justice will not be done if the advocate continues to appear. But, in my opinion, the prosecution in such a case must establish to the satisfaction of the Court that the trial will be materially embarrassed, if the advocate continues to appear for the defence."

15. Since Sarnam Singh Yadav was not only the Presenting Officer, but he was also complainant and witness, therefore, the possibility of bias cannot be ruled out. Principle of *nemo judex in propria causa sua* would

certainly apply because one of the fundamental principle of jurisprudence is that no one can be a Judge in his own cause.

16. The question is not that whether the authority was actually biased or decided partially, but when the circumstances are such as to create a reasonable apprehension in the mind of others that there is likelihood of bias affecting the decision, then the proceedings cannot be upheld.

17. The Supreme Court in the case of **Ashok Kumar Yadav and others v. State of Haryana and others** reported in **(1985) 4 SCC 417** has held as under:-

> **16.** We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real livelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is

vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forest Service in *A.K. Kraipak* v. *Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457] . What happened in this case was that one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naqishbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naqishbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naqishbund did not take part in the deliberations of the Selection Board when his name was considered, by saying: (SCC p. 270, para 15)

> "But then the very fact that he was a member of the Selection Board must have had its own impact on the decision of the Selection Board. Further admittedly he participated in the deliberations of the Selection Board when the claims of his rivals ... was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of

> his participation in the deliberations of the Selection Board there was a conflict between his interest and duty.... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.... There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."
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> This Court emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

18. The procedural fairness is a mandatory ingredient to protect an arbitrary action. Rule of natural justice is not codified canon. The Supreme Court in the case of **Canara Bank and others v. Debasis Das and others** reported in **(2003) 4 SCC 557** has held as under:-

> **13.** Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic

technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of *Cooper* v. *Wandsworth Board of*

Works [(1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] the principle was thus stated: (ER p. 420)

> "[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?' "

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term "principles of natural justice" is not easy to determine. Lord Summer (then Hamilton, L.J.) in *R.* v. *Local Govt. Board* [(1914) 1 KB 160 : 83 LJKB 86] (KB at p. 199) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K.* v. *Spackman* [1943 AC 627 : (1943) 2 All ER 337 : 112 LJKB 529 (HL)] Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard.

18. Lord Wright referred to the leading cases on the subject. The most important of them is *Board of Education* v. *Rice* [1911 AC 179 : 80 LJKB 796 : (1911-13) All ER Rep 36 (HL)] where Lord Loreburn, L.C. observed as follows: (All ER p. 38 C-F)

> "Comparatively recent statutes have

> extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. … The Board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from their determination, either upon law or upon fact. But if the court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that "the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, L.O. in *Spackman* v. *Plumstead District Board of Works* [(1885) 10 AC 229 : 54 LJMC 81 : 53 LT 151] where the learned and noble Lord Chancellor observed as follows:

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of

> being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oftquoted phrase "justice should not only be done, but should be seen to be done".

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

20. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew* v. *Drew and Lebura* [(1855) 2 Macq 1 : 25

LTOS 282 (HL)] (Macq at p. 8), Lord Cranworth defined it as "universal justice". In *James Dunber Smith* v. *Her Majesty the Queen* [(1877-78) 3 AC 614 (PC)] (AC at p. 623) Sir Robort P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in *Arthur John Spackman* v. *Plumstead District Board of Works* [(1885) 10 AC 229 : 54 LJMC 81 : 53 LT 151] (AC at p. 240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In *Vionet* v. *Barrett* [(1885) 55 LJRD 39] (LJRD at p. 41), Lord Esher, M.R. defined natural justice as "the natural sense of what is right and wrong". While, however, deciding *Hookings* v. *Smethwick Local Board of Health* [(1890) 24 QBD 712] Lord Esher, M.R. instead of using the definition given earlier by him in *Vionet case* [(1885) 55 LJRD 39] chose to define natural justice as "fundamental justice". In *Ridge* v. *Baldwin* [(1963) 1 QB 539 : (1962) 1 All ER 834 : (1962) 2 WLR 716 (CA)] (QB at p. 578), Harman, L.J., in the Court of Appeal countered natural justice with "fair play in action", a phrase favoured by Bhagwati, J. in *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248 : (1978) 2 SCR 621] . In *H.K. (An Infant), Re* [(1967) 2 QB 617 : (1967) 1 All ER 226 : (1967) 2 WLR 962] (QB at p. 630), Lord Parker, C.J. preferred to describe natural justice as "a duty to act fairly". In *Fairmount Investments Ltd.* v. *Secy. of State for Environment* [(1976) 1 WLR 1255 : (1976) 2 All ER 865 (HL)] Lord Russell of Killowen somewhat picturesquely described natural justice as "a fair crack of the whip" while Geoffrey Lane, L.J. in *R.* v. *Secy. of State for Home Affairs, ex p Hosenball* [(1977) 1 WLR 766 : (1977) 3 All ER 452 (CA)] preferred the homely phrase "common fairness".

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial

process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "*nemo judex in causa sua*" or "*nemo debet esse judex in propria causa sua*" as stated in *Earl of Derby's case* [(1605) 12 Co Rep 114 : 77 ER 1390] that is, "no man shall be a judge in his own cause". Coke used the form "*aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "*nemo potest esse simul actor et judex*", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "*audi alteram partem*", that is, "*hear the other side*". At times and particularly in continental countries, the form "*audietur et altera pars*" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see *Boswel's case* [(1605) 6 Co Rep 48b : 77 ER 326] (Co Rep at p. 52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (*sic* open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

22. What is known as "useless formality theory" has received consideration of this Court in *M.C. Mehta* v. *Union of India* [(1999) 6 SCC 237] . It was observed as under: (SCC pp. 245-47, paras 22-23)

"*22*. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed see *Malloch* v. *Aberdeen Corpn.* [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] (per Lord Reid and Lord Wilberforce), *Glynn* v. *Keele University* [(1971) 2 All ER 89 : (1971) 1 WLR 487] , *Cinnamond* v. *British Airports Authority* [(1980) 2 All ER 368 : (1980) 1 WLR 582 (CA)] and other cases where such a view has been held. The latest addition to this view is *R.* v. *Ealing Magistrates' Court, ex p Fannaran* [(1996) 8 Admn LR 351] (Admn LR at p. 358) [see de Smith, Suppl. p. 89 (1998)] where Straughton, L.J. held that there must be '*demonstrable beyond doubt*' that the result would have been different. Lord Woolf in *Lloyd* v. *McMahon* [(1987) 1 All ER 1118 : 1987 AC 625 : (1987) 2 WLR 821 (CA)] has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy* v. *Grant* [1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood — not certainty — of prejudice'. On the other hand, *Garner's Administrative Law* (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. *On the other side* of the argument, we have apart from *Ridge* v. *Baldwin* [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935 (HL)] , Megarry, J.

in *John* v. *Rees* [(1969) 2 All ER 274 : 1970 Ch 345 : (1969) 2 WLR 1294] stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in *R.* v. *Chief Constable of the Thames Valley Police Forces, ex p Cotton* [1990 IRLR 344] by giving six reasons. (See also his article '*Should Public Law Remedies be Discretionary*?' 1991 PL, p. 64.) A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] and *Glynn* [(1971) 2 All ER 89 : (1971) 1 WLR 487] were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real

> likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are *not* all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their '*discretion*', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.
>
> *23*. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as in the case before us, '*admitted and indisputable*' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."

19. Since the Presenting Officer himself was the complainant and he had appeared as a witness and thereafter as a Presenting Officer, he was required to justify his evidence, this Court is of the considered opinion that real prejudice has been caused to the petitioner because such an act of the Presenting Officer cannot be said to be beyond bias. It is true that the enquiry report was to be given by the Inquiry Officer, but the petitioner has also raised an objection with regard to the close association of the Inquiry Officer with the Presenting Officer. Furthermore, the Inquiry Officer has to decide the matter on the basis of material produced

by the Presenting Officer. Therefore, the respondents had caused serious prejudice to the petitioner.

20. Under these circumstances, this Court is of the considered opinion that entire departmental inquiry was vitiated, therefore, it is not necessary for this Court to adjudicate as to whether the departmental inquiry could have been done in respect of old charges or not.

21. After having held that the departmental inquiry is initiated on account of appointment of Sarnam Singh Yadav as Presenting Officer, natural consequences should have been to remand the matter with a direction to the respondents to start the departmental inquiry *denovo* with new Inquiry Officer as well as new Presenting Officer. In the present case, charge-sheet was issued in the year 1994. 28 long years have already passed. No useful purpose would be served by remanding the matter to the authorities to conduct departmental inquiry *denovo.*

21. Under these circumstances, the order dated 21.06.1995 passed by the Secretary, Shri Pratap Shiksha Samiti, Lashkar, Lashkar, Gwalior and order dated 28.09.2005 passed by the Commissioner, Public Education are hereby **quashed.**

22. It is submitted by the counsel for the petitioner that the petitioner may be awarded consequential benefits.

23. Heard the learned counsel for the petitioner.

24. The petition is completely silent on the issue whether the petitioner was gainfully employed or not. In order to award back wages or consequential benefits, the fact as to whether the petitioner was gainfully employed or not, is also an important criteria. Since there is no pleading to the effect that the petitioner was not gainfully employed after

termination of his service, this Court finds it difficult to award any back wages.

25. Accordingly, applying the principle of no work no pay, the petition is **allowed**.

(G.S. AHLUWALIA)
JUDGE

Abhi