IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

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HON'BLE SHRI JUSTICE PUSHPENDRA YADAV

ON THE 22nd OF SEPTEMBER, 2025

WRIT APPEAL No. 2460 of 2025

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

RAKESH MANJHI

Appearance:

Mr. Ankur Mody - A.A.G. for appellants / State.

Mr. Surya Pratap Singh - Advocate for respondent.

ORDER

Per. Justice Gurpal Singh Ahluwalia

This writ appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khandnyayapeeth Ko Appeal) Adhiniyam, 2005 has been filed against the order dated 22.04.2024 passed by learned Single Judge in W.P. No. 11198/2019, by which order of termination of service of the respondent has been set aside on the ground of non-compliance of principles of natural justice. However, liberty has also been granted to appellants to pass a fresh order after conducting a full-fledged departmental inquiry.

2. **IA No. 10096/2025** has been filed for condonation of delay.

3. It is the case of appellants that on 22-04-2025, respondent filed an application along with certified copy of the impugned order, only then appellants came to know about the passing of the impugned order.

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Accordingly, they took opinion from the Additional Advocate General, and after completing the formalities, appeal was filed on 20-8-2025. Thus, it is submitted that the delay in filing the appeal may be condoned.

4. *Per contra*, the application is vehemently opposed by counsel for respondent. It is submitted that the explanation given by the State is not satisfactory, and thus, the appeal be dismissed as barred by time.

5. Heard learned counsel for the parties on the question of condonation of delay.

6. It appears that the impugned order was passed on 22-4-2024, but it was uploaded on 4-10-2024. Thus, the submissions made by counsel for appellants that the appellants came to know about passing of the impugned order only on 22-4-2025, when an application was filed by respondent, appears to be *bona fide* and correct.

7. Under these circumstances, where the order was passed on 22-4-2024, but it was uploaded on 4-10-2024, this Court is of considered opinion that sufficient ground has been made out by the appellants for condonation of delay.

8. Accordingly, **IA No. 10096/2025**, for condonation of delay, is **allowed,** and delay in filing this appeal is hereby condoned.

9. The facts necessary for disposal of present appeal, in short, are that an advertisement was issued for appointment on the post of Constable (GD) in the Department of Police. Respondent/petitioner applied for a grant of caste certificate in the office of SDO, Ater, and according to respondent, caste certificate was issued in the year 2005-2006. On the basis of the said

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caste certificate, respondent/petitioner applied for the post of Constable (GD) in the Department of Police against the reserved post for Scheduled Caste. On the basis of aforesaid caste certificate, respondent/petitioner got selected after due process of law, and thereafter, he was given appointment on 31-07-2014 on the post of Constable (GD). Appointment of respondent/petitioner was subject to verification of the caste certificate. The caste certificate was verified from the concerning authority, and it was reported by the SDO, Ater, that the caste certificate has been issued from his office. Later on, on a complaint made by one Rajni Batham, the caste certificate was again got verified, and the SDO, Ater, wrote a letter that the caste certificate was never issued from his office. Accordingly, by order dated 27-05-2019, services of the respondent/petitioner were terminated without giving any show-cause notice or conducting any further enquiry as contemplated under the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. Respondent/petitioner filed WP No. 11198/2019 challenging the order of termination. **While challenging the order of termination, it appears that petitioner did not go into the merits of the case and merely dwelled upon the non-adherence to the principles of natural justice. The aforesaid fact is mentioned in paragraph 8 of the impugned order**.

10. Even during the course of arguments, counsel for respondent did not dispute the fact that respondent/petitioner had not challenged the merits of the case, and had merely confined his arguments to the question of non-adherence to the principles of natural justice.

11. Learned Single Judge has set aside the order of termination on the

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ground of non-adherence to the principles of natural justice.

12. Now, the only question for consideration is as to whether the appellants were under obligation to issue any show-cause notice or to conduct any full-fledged departmental inquiry prior to terminating the services of respondent or not?

13. Appellants had filed their return. It is the case of appellants that respondent belongs to Batham caste, which comes under the category of OBC in district Shivpuri, and the caste certificate of Manjhi (ST), relied upon by the respondent, is a forged document which was never issued by the department concerned. It was submitted that where the appointment was obtained by relying on forged documents, then no departmental inquiry was required, and the principles of natural justice were not required to be adhered to. Even otherwise, a preliminary inquiry was conducted, and it was found that the documents relied upon by the respondent were forged. It was further submitted that even in the appointment order dated 31-7-2014, it was specifically mentioned that in case if any adverse report is received with regard to the marksheet or caste certificate, then services of the employee can be terminated without any inquiry or notice.

14. *Per contra*, counsel for respondent has vehemently opposed the appeal. It is submitted that after the respondent was given appointment, then termination of his service without giving any formal show-cause notice or without conducting a departmental inquiry is bad in law, and the learned Single Judge has rightly set aside the order of termination with liberty to appellants/State that if so advised, then they may conduct a full-fledged

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departmental inquiry.

15. Heard learned counsel for parties.

16. In nutshell, it is the case of respondent that he filed an application for appointment on the post of Constable (GD) against the reserved post meant for Scheduled Tribe candidates, as he belonged to Manjhi caste. Before issuing the order of appointment, caste certificate of the respondent was got verified from the office of SDO, Ater, who had informed that the caste certificate has been issued from his office. However, on a complaint made by Rajni Batham, who is the wife of respondent, the caste certificate was once again got verified from the office of SDO, Ater, and it was opined that the earlier verification report was a manipulated one and the word "*Nahi*" (Not) was erased, and it was specifically reported by SDO, Ater, that the caste certificate of Manjhi was not issued from his office.

17. Under these circumstances, the only question for consideration is as to whether the authorities were under obligation to comply with the principles of natural justice after conducting a full-fledged departmental inquiry or not?

18. As already pointed out, respondent did not challenge the order of termination on merits. He did not file a certified copy of the registration register to show that in fact, the caste certificate was issued from the office of SDO, Ater. The allegations that the caste certificate was not issued from the office of SDO, Ater, were not challenged by the respondent while arguing the petition, and confined his arguments only to the question of non-adherence to the principles of natural justice.

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19. Now the only question for consideration is that where the order of termination has been passed on the ground that appointment order was obtained by playing fraud on the authorities, then whether the question of adherence to the principle of natural justice would apply or not?

20. Single Bench of this Court, by judgment passed in the case of **Shailesh Singh Bhadouriya Vs. The State of Madhya Pradesh and Others** in **WP No. 4715/2014** had held that adherence to the principles of natural justice in a case of fraud is not necessary. The said judgment was challenged by filing **WA No. 1038/2025** , and Coordinate bench of this Court, by order dated **15-4-2025**, passed in the case of **Shailesh Singh Bhadouriya Vs. The State of Madhya Pradesh and Others**, has upheld the order passed in WP No. 4715/2014. The Coordinate Bench of this Court, while upholding the order passed by the Single Judge in WP No. 4715/2014, has held as under:

> "1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant being crestfallen by the order dated 24.03.2025 passed by learned Single Judge in Writ Petition No.4715 of 2014, whereby the writ petition filed by the appellant has been dismissed.
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> 2. Precisely stated facts of the case are that appellant was appointed on the post of Lower Division Clerk vide order dated 15.07.1988 passed by the Chief Medical and Health Officer, Narsinghpur. Thereafter, vide order dated 31.05.1989, the services of petitioner were absorbed in the office of Chief Medical and Health Officer Morena in Universal Immunization Center, Morena. In compliance thereof, he joined at Morena on 09.06.1989. Since then he was working in the department.
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> 3. It appears that some complaints were made to Lokayukta and inquiry started by Lokayukta organization with regard to his appointment. Therefore, a show cause notice dated 09.05.2014 was issued by respondent No.4-Joint Director, Health Services, City Center, Gwalior alleging foul play in appointment of petitioner. Name and address of father of appellant in the appointment order were not mentioned. Even it was found that appointment order of appellant does not bear the signatures of the then Chief Medial and Health Officer who was the appointing authority and interestingly, no record pertaining to the appointment of

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petitioner was also found in the office of CMHO, Narsinghpur. His service book was also missing.

4. Appellant filed reply and claimed that his appointment is proper. However, impugned order was passed on 24.07.2014 by the Additional Director (Administration) Directorate of Health Services /respondent No.3. The appointment order dated 15.07.1988 was found to be null and void and his services were terminated. appellant challenged the said termination order in writ petition. Vide impugned order, writ Court dismissed the petition. Therefore, appellant is before this Court.

5. It is the submission of learned Senior Counsel appearing on behalf of appellant that to arrive to the conclusion that fraud has been committed, departmental inquiry was required to be conducted. No such inquiry was conducted therefore, impugned order is vitiated. It is further submitted that initial show cause notice was issued purportedly under Rule 10 (4) of The M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 which is for inflicting minor penalty. However, petitioner was visited with major penalty of termination of service. This is bad in law.

6. Learned counsel for the respondents/State opposed the prayer and submits that learned writ Court rightly considered the case on the basis of fraud being perpetrated by the appellant while getting appointment on the basis of forged and fabricated documents. Since, fraud has not been committed in respect of any action during the course of employment and the very appointment was based upon forged documents as well as the fact that no documents was produced regarding his appointment therefore, there was no requirement existed to conduct departmental inquiry. Appellant obtained appointment fraudulently. He refers four points referred by the authority in show cause notice dated 07.05.2014 (Annexure P-6).

7. The said points were raised in inquiry conducted by the Divisional Joint Director, Health Services, Gwalior. On the basis of those four points, show cause notice was answered by the appellant and after considering the reply, he has been terminated. Learned counsel for the respondents/State relied upon the judgment of Apex Court in the case of **The State Of Bihar and Ors. vs Kirti Narayan Prasad (2019) 13 SCC 250**. He prayed for dismissal of appeal.

8. Heard the rival submissions.

9. This is the case where services of appellant were terminated on the ground that he obtained appointment through forged documents/fraud.

10. Show cause notice was issued to the appellant by the Additional Director (Administration) Directorate of Health Services, M.P. The said show cause notice was in pursuance to complaint lodged at the Office of Lokayukta Organization and vide letter dated 03.08.2013, inquiry report was placed. The four points surfaced in the inquiry report are important and worth reproduction for bringing clarity into the issue, which are:-

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जाँच प्रतिवेदन में संभागीय संयुक्त संचालक स्वास्थ्य सेवायें, ग्वालियर अवगत करवाया है कि:-
1. यह कि आपके द्वारा सेवा में नियुक्ति आदेश की मूल प्रति, जाँच/कथन के दौरान जाँचकर्ता अधिकारी को समक्ष में प्रस्तुत नहीं किये गये बल्कि आपके द्वारा नियुक्ति आदेश की स्वप्रमाणित छायाप्रति प्रस्तुत की गई जो किसी भी राजपत्रित अधिकारी द्वारा सत्यापित नहीं होने की वजह से संदोहास्पद है।
2 जाँचकर्ता अधिकारी के समक्ष, आपके द्वारा नियुक्ति आदेश की प्रति प्रस्तुत की गई जिसमें आपके पिता का नाम एवं निवास के पते का सही उल्लेख होना, नहीं पाया गया।
3. नियुक्तिकर्ता अधिकारी, तत्कालीन मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी नरसिंहपुर (दिनांक 15.07.1988 में) के हस्ताक्षर का उनके मूल हस्ताक्षर से मिलान होना नहीं पाया गया तथा मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी कार्यालय एवं जिला मलेरिया अधिकारी कार्यालय नरसिंहपुर से आपकी नियुक्ति / उपस्थिति तथा भुगतान से संबंधित कोई रिकार्ड जॉच उपरान्त मिलना नहीं पाया गया।
4. यह कि आपकी नियुक्ति दिनांक 21.07.1988 से दिनांक 08.06.1989 तथा दिनांक 08.07.1990 से दिनांक 31.03.1995 तक साथ ही विभिन्न अवधियों का सेवा सत्यापन, जॉच उपरान्त, आपकी सेवापुस्तिका में होना नहीं पाये जाने तथा दिनांक 15.07. 1988 को जारी किये गये दो नियुक्ति आदेशों में लगभग 3000 से अधिक जावक कमांकों का अन्तर होना, प्रकरण को संदेहास्पद बनाता है।

11. This show cause notice was based upon inqiury conducted against the petitioner and issued in respect of commission of misconduct under Rule 3(1)(ii)(iii) of The M.P. Civil Services (Conduct) Rules, 1965. In the show cause notice, he was asked to bring all documents in original in the Directorate.

12. In pursuance to show cause notice, petitioner filed his response and attached certain documents. After the inquiry, conducted by Joint Director Health Services, Gwalior, impugned order has been passed. Therefore, proper opportunity of hearing was provided to the appellant and thereafter, impugned order has been passed.

13. So far as preliminary inquiry is concerned, it conducted threadbare. Ever after issuance of show cause notice, petitioner was asked to bring all the documents in original before the authority but he failed to produce original appointment order and other documents. Surprisingly, service book of petitioner was not available. He was appointed at District Narsinghpur and from there somehow, he managed to join at Morena, a District place, more than 500 KMs away from original place of posting (Narsinghpur).

14. The impugned order also contained one peculiar fact that appointment order of appellant contains No.18896-900 whereas one G.P. Upadhyay who was appointed on same day bears No.15800-04. In one day, 3092 outward numbers are impossible to be endorsed in office of authority at District Narsinghpur. Not only this, it was specifically

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mentioned in the inquiry report that appointment order does not bear signatures of Dr. N.K.Naik who was working as C.M.H.O. at the relevant point of time, his signature does not match with the signature over the appointment order (photocopy) of appellant. Despite giving sufficient opportunity to present his case with documents, appellant was failed to do so.

15. It is not a case where petitioner did anything during the course of employment; in fact, he obtained employment by preparation of forged documents. Therefore, question of holding departmental inquiry does not arise. He can not get the benefit of Article 311 of the Constitution or any other statutory rule. Departmental inquiry is held in respect of delinquent employee or civil servant who committed misconduct during the course of employment/service. Here, appointment of petitioner was void ab initio and rightly termed as null and void while obtaining through fraud.

16. In the case of **Kirti Narayan Prasad (supra)** Hon'ble Supreme Court has given guidance in a very categorical terms:-

> *17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise.* ***Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.***
>
> *18. Therefore, the Civil Appeals filed by the writ petitioners in the aforesaid batch of appeals are hereby dismissed. The Civil Appeals filed by the State of Bihar are allowed and the writ petitions filed before the High Court of Patna in the said cases are hereby dismissed. There shall be no order as to costs.*

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17. Beside that **fraud vitiates all solemn proceedings**. It is well settled principle of law that Fraud Vitiates Everything. This principle has been dealt with by the Apex Court in its various judgments viz. in the case of **R. Ravindra Reddy Vs. H. Ramaiah Reddy, (2010) 3 SCC 214, Badami Bai (D) Tr. L.R. Vs. Bhali, (2012) 11 SCC 574, Uddar Gagan Properties Ltd. Vs. Sant Singh, (2016) 11 SCC 378, K.D. Sharma Vs. SAIL, (2008) 12 SCC 481, Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133, DDA Vs. Skipper Construction, (2007) 15 SCC 601 and in the case of Jai Narain Parasrampuria Vs. Pushpa Devi Saraf, reported in (2006) 7 SCC 756**.

18. In view of the above discussion, learned writ Court has rightly discussed in correct perspective and passed the impugned order. Thus, no case for interference is made out.

19. Appeal stands dismissed."

21. Furthermore, the principle of natural justice has undergone a lot of changes. Once the order on merits was not challenged, then under the facts and circumstances of the case, this Court is of considered opinion that grant of opportunity of hearing is nothing but a useless formality.

The Supreme Court in the case of **Nirma Industries Limited and another Vs. Securities and Exchange Board of India** reported in **(2013) 8 SCC 20** has held as under :-

"30. In B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , having defined the meaning of “civil consequences”, this Court reiterated the principle that the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the employee. It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. In other words, the Court reiterated that the person challenging the order on the basis that it is causing civil consequences would have to prove the prejudice that has been caused by the non- grant of opportunity of hearing.…....

35. Mr Venugopal has further pointed out that apart from the appellants, even the merchant bankers did not make a request for a personal hearing. He submitted that grant of an opportunity for a personal hearing cannot be insisted upon in all circumstances. In support of this submission, he relied on the judgment of this Court in Union of India v. Jesus Sales Corpn. [(1996) 4 SCC 69] The submission cannot be brushed aside in view of the observations made by this Court in the aforesaid judgment, which are as under: (SCC pp. 74-75, para 5)

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> "5. The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred to. It need not be pointed out that under different situations and conditions the requirement of compliance with the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi- judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."

The Supreme Court in the case of **Chairman, State Bank of India and another Vs. M.J. James** reported in **(2022) 2 SCC 301** has held as under :-

> "31. In State of U.P. v. Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] referring to the aforesaid cases and several other decisions of this Court, the law

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was crystallised as under : (SCC para 42)

> "42. An analysis of the aforesaid judgments thus reveals:
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> 42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
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> 42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
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> 42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
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> 42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
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> 42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

The Supreme Court in the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others** reported in **(2015) 8 SCC 519** has held as under :-

> "20. Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "naturalist" approach to the phrase "natural justice" and is related to "moral naturalism". Moral naturalism captures the essence of commonsense morality—that good and evil, right and wrong, are the real features of the natural world that human reason

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can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo debet esse judex in propria sua causa; and (ii) opportunity of being heard to the party concerned i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order".

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38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post- decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead

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to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

41. In ECIL [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle: (SCC pp. 756-58, para 30)

> "30. Hence the incidental questions raised above may be answered as follows:
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> ***
>
> (v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in ECIL [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: (SCC p. 758, para 31)

> "31. Hence, in all cases where the enquiry officer's report is

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not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

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 :-

"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

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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

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> 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."

> 23. As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see Gadde Venkateswara Rao v. Govt. of A.P. [AIR 1966 SC 828]). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India [(1990) 1 SCC 613 : AIR 1990 SC 1480] .)"

22. Under these circumstances, it is clear that once an order of appointment was obtained by playing fraud by filing forged documents and findings recorded by appellants/State that the caste certificate relied upon by respondent was a forged document, was never challenged by the respondent while arguing the writ petition before the Single Judge, this Court is of considered opinion that it is a case of fraud, and under these circumstances, it was not necessary for appellants to adhere to the principles of natural justice. Furthermore, respondent has not pointed out any prejudice which has been caused to him on account of non grant of opportunity of hearing for the simple reason that he did not challenge the order of termination on merits.

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23. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that the case in hand is duly covered by the judgment passed by Division Bench of this Court in the case of **Shailesh Singh Bhadoriya (supra)**, and accordingly, learned Single Judge committed a material illegality by setting aside the order dated 27-5-2019 passed by Superintendent of Police, Gwalior on the ground of non-compliance of principles of natural justice.

24. Under these circumstances, the order dated 22.4.2024, which was uploaded on 4-10-2024, passed by learned Single Judge in WP No. 11198/2019, is hereby set aside, and WP No. 11198/2019, filed by respondent, is hereby dismissed.

25. With aforesaid observation, appeal succeeds and is hereby **allowed**.

(G. S. AHLUWALIA)
JUDGE

(PUSHPENDRA YADAV)
JUDGE

AKS

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