HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Writ Petition No.3083 / 2017

Sheikh Mohd. Arif

Versus

Dr. Hari Singh Gaur University, Sagar & Ors.

Date of Order	16.01.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Petitioner: Shri Sanjay K. Agrawal, Advocate. For Respondents : Smt. Shobha Menon, Senior Advocate with Ms Manpreet Bhumra, Advocate.
Law laid down	If the order suffers from civil consequences, the principle of natural justice has to be followed by providing hearing to the sufferer. The hearing should be done by the same authority who has to decide the case. Hearing by one authority and order passed by another is not a sufficient compliance of the principle of natural justice.
Significant Para Nos.	16 to 26

Reserved on : 05.09.2019
Delivered on : 16.01.2020

(ORDER)
(16.01.2020)

This petition is under Article 226 of the Constitution of India whereby the petitioner is seeking quashment of the

communication dated 26/31.08.2016 (Annexure-P/18) and 07.12.2016 (Annexure-P/22).

2. As per the facts of the case, the petitioner was initially appointed as Stenographer (Hindi) vide order dated 07.12.1995 in the respondent-University. Vide order dated 13.02.2001 he was extended the benefit of minimum of the pay-scale of the post of Stenographer and w.e.f. 01.01.1996 he was granted the benefit of V Pay Commission and of VI Pay Commission vide order dated 22.10.2012. The petitioner has claimed that since 1995, he was working in the respondent-University and was being given the pay-scale of a Stenographer. On 05.04.2012 the respondent-University issued a notice inviting the applications for appointment on various posts from the eligible candidates. The petitioner applied for the post of Section Officer in EMMRC (Electronic Multi Media Research Centre) in the general category which was advertised on a pay-scale of Rs.9300-34800 + 4200 Grade Pay. As per the requisite qualification prescribed in the advertisement, the candidate should have Second Class Bachelor Degree / Master Degree in any subject preferably Degree in Law or Post Graduation Diploma in Personnel Management with five years of experience as Senior Administration Assistant. As per the petitioner, the appointments were to be made in view of the

provisions of the Central Universities Act, 2009 (in short “Act, 2009”). In pursuance to which, the respondent-University has laid down the manner of appointment and emoluments of the employees other than teachers and other academic staff in their draft Ordinance. The appointment had to be made by the Executive Council or by the Vice Chancellor as per the provisions of the Ordinance. As per the petitioner, the Executive Council is the principal Executive body of the University as per the provisions of Section 21(1) of Act, 2009. As per the petitioner, he fulfilled all the essential eligibility criteria as per the advertisement for appointment on the post of Section Officer and as such he submitted his application on 14.05.2012. On the date of submitting the application, the petitioner was working on the post of Stenographer in the University and his application form was duly endorsed and forwarded by the respondents. The respondent-University as per the provisions of Ordinance-17 relaxed certain conditions and provided benefit to other candidates who applied for the post of Section Officer in EMMRC. As per the petitioner, out of 14 applications, only 8 were found suitable and as such they were issued call letters to appear in the written examination. The petitioner’s call letter dated 29.01.2013 was also issued asking him to appear in the written examination. Thereafter he was subjected to interview

and finally his name was recommended for appointment to the post of Section Officer. The recommendation of the Selection Committee for the said post was placed before the Executive Council of the respondent-University for its approval. The Executive Council in its meeting approved the case of the petitioner for appointment to the post of Section Officer and accordingly he was appointed on a pay scale of Rs.9300-34800 + 4200 Grade Pay. The order of appointment was issued on 16.09.2013 (Annexure-P/8). The petitioner joined in pursuance to the said order of appointment and thereafter on 22.02.2014 a corrigendum was issued whereby the Grade Pay of the petitioner was corrected from 4200 to 4600/- in terms of pay scale recommended by the Central Government.

3. Thereafter, the petitioner was served with a show cause notice on 21.05.2014 issued by respondent No.3 alleging that the petitioner did not fulfill the requisite qualification for appointment on the post of Section Officer, therefore, he was asked to submit a reply within three days as to why his appointment on the post of Section Officer be not cancelled. The petitioner submitted his reply on 23.05.2014 mentioning therein that he possessed the requisite qualification and his name was recommended by the duly constituted Selection Committee and after approval of the Executive Council, the appointment was

made. The respondent No.3 thereafter on 28.05.2014 cancelled the appointment of the petitioner.

4. Being aggrieved by the said order, a writ petition bearing W.P.No.8388/2014 was filed by the petitioner before the High Court challenging the order dated 28.05.2014, in which, the said order was quashed giving liberty to the competent authority to refer the matter to the Executive Council for taking appropriate decision in accordance with law. The order passed by this Court on 16.03.2016 is Annexure-P/16. The petitioner thereafter submitted a representation before the respondents for accepting his joining on the post of Section Officer apprising them that the order passed on 28.05.2014 was quashed by the High Court. All of a sudden, the petitioner received a communication dated 31.08.2016 (Annexure-P/18) apprising him that the Executive Council in its meeting dated 09.07.2016 after examining the case of the petitioner has resolved that the appointment on the post of Section Officer in EMMRC cannot be sustained because the petitioner was not eligible for the said post. Against the said communication, the petitioner made a detailed representation on 23.09.2016 stating therein that since the High Court in its order dated 16.03.2016 granted liberty to the competent authority to place the matter before the Executive

Council but without giving any opportunity to the petitioner, the order was passed.

5. As per the petitioner, the respondent-University had granted relaxation not only to the petitioner but also to other persons under the provisions of Ordinance-17 and as such appointment of the petitioner cannot be said to be illegal. No action was taken upon the representation of the petitioner then he preferred an appeal under Section 35 of the Act, 2009 raising issue of violation of principle of natural justice. He has also submitted in the appeal that as per Section 9 of the Act, 2009, the Vice Chancellor is only an officer and the authorities are prescribed, therefore, any Committee constituted by the Vice Chancellor cannot be considered to be a duly constituted Committee. The petitioner has submitted that he was appointed by the Executive Council and therefore the Committee had to be constituted by the said Council only as per the provisions of Section 19 of the Act, 2009. The appeal was rejected vide order dated 07.12.2016 (Annexure-P/22). The petitioner under the Right to Information Act applied for certain documents and obtained the same just to demonstrate that the appellate authority has not provided any opportunity of hearing.

6. In the petition, the order impugned has been assailed mainly on the ground that same is without jurisdiction. It is also

stated by the petitioner that relaxation was provided by the respondent-University under the provisions of Ordinance-17 and thereafter the appointment of the petitioner was duly approved by the Executive Council but without affording any opportunity of hearing, the order of appointment has been cancelled. The petitioner has also submitted that the respondents nowhere disclosed as to which eligibility criteria the petitioner is lacking. As per the petitioner, the Vice Chancellor is not the competent authority but he is only an officer and the authorities described in Section 19 and therefore he could not constitute any Committee. The authorities have not considered that the relaxation has been provided by the University not to the petitioner only but to other eight candidates as well and therefore the petitioner's appointment cannot be said to be illegal.

7. The respondents have submitted their reply taking stand therein that the petitioner's appointment as a Stenographer (Hindi) in the respondent-University was on purely temporary basis and his term was extended from time to time but merely because he was granted the benefit of minimum of the pay-scale, it does not confer upon him any experience as was required in the advertisement. It is also stated by the respondents that the post of Senior Administration Assistant is

supervisory in nature. As the petitioner was performing the duties of Stenographer and therefore his experience cannot be equated with that of Senior Administration Assistant whereas in the advertisement, the experience of five years was required. The respondents have also stated that the essential qualification for the post of Section Officer has been prescribed by the CEC of UGC which does not provide any relaxation in the qualification and the Committee has given detailed reason as to why the qualification possessed by the petitioner cannot be considered to be a requisite qualification. The petitioner was not considered to be a regular employee and therefore as per the respondents, his experience cannot be considered to be the requisite experience to fulfill the requirement of the advertisement. The respondents have also stated that the petitioner has to substantiate the prejudice caused to him for not providing the opportunity of hearing.

8. The petitioner filed a rejoinder in reply to the stand taken by the respondents in their return and has stated that the relaxation was provided by the University as per the provisions of Ordinance-17. The University since granted relaxation in the qualification and as such after examining the same, the appointment of the petitioner was recommended by the Executive Council which is Principal Executive Body of the

University then no other Committee constituted by the Vice Chancellor could consider or cancel the appointment of the petitioner.

9. The additional return was filed by the respondents and specifically stated therein that the experience on the post of Stenographer cannot be counted for the purpose of appointing petitioner on the post of Section Officer because the petitioner was working as Stenographer on contract basis and the required experience was from a regular employee. It is also stated by them that as per the Ordinance-17, the University has the power to relax any of the qualifications, experience, age, etc. in exceptional deserving case but as per the respondents in a notification provided by CEC (UGC) there was no provision for relaxation but even otherwise they have stated that it could be provided in deserving cases.

10. The learned counsel for the petitioner, during the course of arguments, has contended that the appointment of the petitioner on the post of Stenographer (Hindi) was made on regular basis and nowhere it is mentioned that the said appointment had been made on contract basis and even otherwise it is nowhere mentioned that the experience only of a regular employee would be considered. As per the petitioner, declaring him to be disqualified for not possessing the requisite

experience is not proper. He has also contended that the Committee which has taken a decision against the petitioner has not provided any opportunity of hearing to him and therefore the report of the Committee suffers from violation of principle of natural justice. It is also contended by the petitioner that the said Committee nowhere has considered and infact is silent as to what relaxation has been provided to the petitioner and without considering the same, any conclusion drawn by the Committee cannot be said to be proper. It is contended by the counsel for the petitioner that in view of the advertisement dated 05.04.2012 very categorically contained condition No.9 empowering the University to relax any of the qualifications and under such Clause relaxation has been provided but that was not taken note of by the Committee. It is also contended by the petitioner that as per the Ordinance-17, the University will have the right to relax any of the qualifications and as such UGC has no role in the matter. He submits that the Screening Committee has considered the experience of the petitioner that the UGC Regulation applies to teaching staff but not to the post of Section Officer. He has also contended that the respondents did not comply the direction of the High Court passed in earlier round of litigation and the matter was never placed or referred to the Executive Council. He has contended that the constitution of

the Committee which has considered the case of the petitioner was illegal. It is submitted by the petitioner that as per the settled principle of law, whatever material placed before the Committee and part of the order cannot be supplemented by filing additional material alongwith the return. He submits that the decision can be taken only by the Executive Council.

11. *Per contra*, Smt. Menon, Senior Advocate appearing for the respondents submits that the petitioner was not a regular employee and as per the qualification, the experience as Senior Administrative Assistant was required. She further submits that in the notice issued to the petitioner on 21.05.2014, it is specified that the experience on the post of Senior Administrative Assistant was required and the petitioner did not possess the said qualification. She has contended that the petitioner failed to substantiate as to how he acquired the said qualification and even in the reply submitted to show cause notice on 23.05.2014 there was no answer to that effect. She submits that in additional reply submitted by the petitioner on 26.05.2014 (Annexure-P/14) the petitioner has clarified that though he did not possess the requisite experience as per the requirement of the advertisement but his experience cannot be considered to be lesser than that. It itself indicates that the petitioner was not having requisite experience. It is also

contended by the respondents that the decision was taken by the Executive Council.

12. In reply to the arguments advanced by the learned counsel for the respondents, it is contended by the learned counsel for the petitioner that there was no post like Senior Administrative Assistant. He has also contended that the show cause notice of the petitioner is of no use because the same culminated in the final order which has already been quashed by the Court and therefore the Committee had to provide an opportunity of hearing to the petitioner. He submits that the post of Senior Administrative Assistant was not in the set-up, therefore, the work of similar nature was to be considered for the purpose of experience.

13. In support of his contention, the learned counsel for the petitioner has placed reliance on various decisions, they are – **AIR 1959 SC 308** parties being **Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another; 1991 Supp (1) SCC 330** parties being **Shrawan Kumar Jha and Others v. State of Bihar and Others; 2004(2) MPLJ 326** parties being **Radha Mohan Goswami and others v. State of M.P. and others; (2008) 14 SCC 306** parties being **B.C. Mylarappa Alias Dr. Chhikkamylarappa v. Dr. R. Venkatasubbaiah and others**

and also on a decision rendered by the Division Bench of this Court in **W.P.No.5856/2016** (Dr. Sunny Juneja and others v. State of M.P. and others) on 30.01.2018.

14. The learned Senior Counsel for the respondents has relied upon a decision in the case reported in **2007 (4) SCC 54** parties being **Ashok Kumar Sonkar v. Union of India and others**.

15. I have heard the learned counsel for the parties at length and perused the record.

16. From the contentions made by the parties, two questions emerge for adjudication. First, whether the cancellation of appointment of the petitioner to the post of Section Officer suffers from violation of the principle of natural justice and second, whether the qualification acquired by the petitioner can be considered to be a requisite qualification as prescribed in the advertisement to be pointed on the post of Section Officer.

17. In this case, the petitioner has disclosed his qualification which he possessed and also claimed that it was the requisite qualification and respondent-University has also provided relaxation. The petitioner is, therefore, claiming that after approving his qualification by the Executive Council, he has been given appointment and therefore at later stage, the

authority cannot take a decision that his qualification was not requisite as per the advertisement. However, this issue was decided by the competent authority and a Committee constituted. Under the facts and circumstances of the case, the first issue is required to be decided whether the petitioner has been provided proper opportunity of hearing or not because the subsequent issue regarding requisite qualification in the facts and circumstances of the present case can be better examined by the skilled body that too considering the facts and circumstances of the case. Therefore, instead of deciding the second issue, the first issue is dwelled upon, whether the opportunity was required to be provided to the petitioner before cancelling his appointment or not.

18. In the present case, the respondents have contended and relied upon a decision saying that the principle of natural justice cannot be applied in every case and as per the facts and circumstances of the present case that would have been the futile exercise. It is also contended by them that a show cause notice had been issued to the petitioner, he submitted his reply and considering the same his appointment was cancelled and even otherwise that fulfills the requirement of giving an opportunity to the petitioner. Moreover, in view of the arguments canvassed by the parties and on the basis of material placed

before this Court, it is to be adjudicated whether proper opportunity of hearing was required and has been given to the petitioner or not.

19. Undisputedly, a show cause notice was issued to the petitioner on 21.05.2014 (Annexure-P/12) mentioning therein that the experience acquired by the petitioner was not as per requisite experience mentioned in the advertisement for the post of Section Officer and the following explanatory note was made in the show cause notice asking the petitioner to submit his explanation that "you meet the eligibility criteria as laid down in the advertisement made for appointment of Section Officer in EMMRC and as to why his appointment would not be cancelled".

> "**Explanatory Note regarding experience**: The post of Senior Administrative Assistant is a post of supervisory in nature and corresponding Grade Pay of Rs.4200/- is attached with the post. Further, the post of Section Officer is a key post and requires sound knowledge of rules/regulations and procedures of the Government of India/University. Also a person must have acumen to interpret rules appropriately and excellent drafting skills both in English and Hindi is essential. Section Officer in EMMRC directly reports to the Director for all matters and as such officer must have sound knowledge of administrative/financial/purchase procedures."

20. The petitioner in response to the show cause submitted a reply explaining as to why his experience which he

disclosed in his requisite qualification had to be considered the requisite experience for the post of Section Officer. The reply given by the petitioner was of the following nature:-

''डॉ. हरीसिंह गौर विश्वविद्यालय, सागर (म.प्र.) द्वारा विज्ञापन क्रमांक R/A-NA/02/2012, दिनांक 05.04.2012 के माध्यम से रोजगार सूचना प्रकाशित की गई थी। जिसमें अनुभाग अधिकारी (Section Officer), ई.एम.एम.आर.सी. हेतु एक पद अनारक्षित वर्णित करते हुए तृतीय पृष्ठ के सीरियल नं. 12 में वर्णित अनुभाग अधिकारी (Section Officer) पद हेतु वांछित योग्यतायें वर्णित की गई चूंकि आवेदक अनुभाग अधिकारी के पद की समस्त योग्यतायें एवं कार्यानुभव पूर्ण करता था इसलिए आवेदक ने वर्णित पद हेतु अपना आवेदित फार्म मय योग्यता संबंधी समस्त सहपत्रों सहित पंजीकृत डाक द्वारा विश्वविद्यालय के कार्यालय में प्रस्तुत किया था।

तदुपरांत आवेदक को वर्णित पद हेतु लिखित परीक्षा में शामिल करने के लिये विश्वविद्यालय द्वारा पत्र क्र. Rectt./NT/2013/20, दिनांक 29 जनवरी 2013 जारी किया गया था एवं दिनांक 11 फरवरी 2013 को आयोजित लिखित परीक्षा में सम्मिलित होकर सफल होने के उपरांत अनुभाग अधिकारी (Section Officer) हेतु साक्षात्कार में दिनांक 11 फरवरी 2013 को उपस्थित होने हेतु सूचित किया गया। तदुपरांत आवेदक अनुभाग अधिकारी के पद हेतु नियुक्ति हेतु आयोजित साक्षात्कार में शामिल हुआ था।

साक्षात्कार में सफल होने के उपरांत आवेदक को आदेश क्रमांक R/2013/118, सागर दिनांक 16.09.2013 रजिस्ट्रार, डॉ. हरीसिंह गौर विश्वविद्यालय, सागर द्वारा जारी कर अनुभाग अधिकारी (Section Officer) , ई.एम.एम.आर.सी., डॉ. हरीसिंह गौर विश्वविद्यालय, सागर में नियुक्त किया गया था। तदुपरांत आवेदक वर्णित पद पर कार्यभार ग्रहण दिनांक 18.09.2013 से लगातार कार्यरत् है।

महोदय, आवेदक को अनुभाग अधिकारी (Section Officer) के पद की समस्त वांछित योग्यतायें एवं कार्यानुभव पूर्ण करने के कारण ही वर्णित पद पर आपके आदेश द्वारा ही नियुक्त किया गया है।''

21. Apart from this, the petitioner has also contended that as per the provisions of Ordinance-17, the Vice Chancellor had competence to relax the qualification of experience and as such the petitioner was provided such relaxation alongwith other eight candidates.

22. In the first round of litigation, the respondent-University had passed an order cancelling the appointment of the petitioner on the basis of show cause issued and reply filed by the petitioner and his stand was not found satisfactory, therefore, by way of Annexure-P/15 dated 28/30.05.2014, the appointment of the petitioner was cancelled by the Registrar of the University but that order was set aside by the High Court in a petition preferred by the petitioner i.e. W.P.No.8388/2014 with the following liberty:-

> "….However, it would be open for the competent authority to refer the matter to the Executive Council for taking appropriate decision in accordance with law."

23. According to the respondents, in compliance of the order passed by the High Court, a Committee was constituted to examine the eligibility for the post of Section Officer in EMMRC and finally that Committee has submitted a report, in pursuance

to which, an order has been issued on 26/31.08.2016 (Annexure-P/18) apprising the petitioner that the report is against him and that would be placed before the Executive Council and it is also apprised that the appointment of the petitioner would not be sustained in view of the said report as he did not have requisite qualification and thereafter the appointment of the petitioner was cancelled. The petitioner has contended that the Committee had to provide an opportunity of hearing to the petitioner so that he could try to convince the said members of the Committee that under the existing circumstances, he did possess the requisite qualification, but decision has been taken without giving him any opportunity of hearing and as such the principle of natural justice has been violated. In support of his contention, the learned counsel for the petitioner has placed reliance upon several decisions which have been mentioned in foregoing paragraph.

24. The learned counsel for the petitioner has contended that only a show cause notice was issued to the petitioner vide Annexure-P/12, in pursuance to which, he submitted reply and that show cause was culminated into final order and that order was quashed by the High Court giving liberty to the respondent-University to place the matter before the Executive Council. He submitted that the show cause issued to the petitioner cannot

be said to be the compliance of the principle of natural justice because the said show cause notice was not considered by the authority and the Committee which has passed the order and the petitioner should have been given opportunity by the said Committee to beseech his stand and try to convince them as in view of the existing facts and circumstances, he possessed the requisite qualification.

25. The learned Senior Counsel for the respondents submitted that issuance of a show cause notice to the petitioner is sufficient compliance of the principle of natural justice and even otherwise, in view of the facts and circumstances of the case, the principle of natural justice cannot be put in straight jacket formula because the petitioner failed to prove any prejudice as it is apparent that he did not have the requisite qualification and if at all the hearing was provided to him, the decision of the Committee could have been changed. As per the respondents, applying the principle of natural justice in the present case would have been a futile exercise. She has placed reliance in the case of **Ashok Kumar Sonkar** (supra). However, I am not convinced with the contention raised on behalf of respondents because it is not a case in which the appointment has been given to the petitioner on the basis of some uncommunicated information or any suppression has been done

on the part of the petitioner, but it is a case in which the petitioner has contended that he possessed experience which was experience of the similar work and as had been required as per the advertisement for the appointment on the post of Section Officer. As per the petitioner, even after considering the said experience, the Executive Council appointed him and it is further submitted by the petitioner that the University taking shelter of Ordinance-17 has relaxed the said qualification and extended the said relaxation not only to the petitioner, but also to other eight candidates, therefore, the petitioner had to be provided an opportunity of hearing so that he could place all these materials before the authority which has taken a decision that the petitioner did not possess the requisite qualification. Undisputedly, the order canceling the appointment suffers from civil consequence and in such circumstances, the principle of natural justice needs to be followed. Ergo, in my opinion, it is not a case in which not providing any hearing to the petitioner would not cause any prejudice to him. On the contrary, it is a case in which if opportunity had been granted to the petitioner, he would have been in a position to convince the enquiry committee or the authority which has passed the order cancelling the appointment of the petitioner. Thus, the case on which, the learned Senior Counsel for the respondents has placed

reliance, is not applicable in the present facts and circumstances of the case.

26. I am also not convinced with the contention raised by the learned counsel for the respondents that show cause notice had been issued to the petitioner and he had submitted reply. But in view of the law laid down by the Supreme Court in case of **Gullapalli Nageswara Rao** (supra), it is clear that the opportunity of hearing must be provided to the petitioner by the Committee which has examined the qualification of the petitioner and earlier show cause notice issued to the petitioner and which was finally culminated in the order which has been quashed by the High Court, cannot be considered to be a compliance of the principle of natural justice. The relevant paragraph is reproduced hereinbelow.

> "31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure

> followed in this case also offends another basic principle of judicial procedure."

27. In another decision, on which the petitioner has placed reliance in case of **Radha Mohan Goswami** (supra), the Supreme Court dealing with the case of deregularization of the employees, who were regularized earlier but lateron it was found that the regularization was made excess to the sanctioned strength and therefore on a telephonic instruction, such regularization was cancelled without even issuing show cause notice to the employees. The relevant paragraphs are quoted hereinunder:-

> "11. There is no dispute in accepting the contention of the respondent/State that they are entitled to reduce their sanctioned strength, and can deregularise certain employees who are in excess of the sanctioned strength. But the same has to be done in a fair manner and the principle of last come first go has to be followed. A person having shorter length of service and even if regularised earlier may have to make room for an employee who has been regularised subsequently and has a longer period of service keeping in view his seniority. The 30% cut is applicable through out the State and therefore, the process has to be done keeping in view the seniority and date of appointment of the employees working in the whole State, it can not be implemented by selecting a particular division or circle. Therefore, if the reduction in strength is necessary and a process of deregularisation was to be carried out then this has to be done by considering the cases of each and every employee keeping in view the seniority and date of regularisation but picking up of few employees from a particular division and

deregularising them is not the proper way for implementing the ban imposed by the State Government for reducing the strength by 30%.

12. In the present case, even though learned Counsel for the petitioners during the course of hearing have pointed out various discrepancies like orders of classification passed in cases of some petitioners by the Labour Court and affirmed by the Industrial Court, availability of vacant posts in the establishment where the petitioners were working and ignoring seniority of many of the petitioners while passing the impugned order. All these factors have to be taken note of and merely passing a mechanical order on telephonic message and enmass deregularisation of the employees was not the correct procedure. A right had accrued to the petitioners when the order was passed on 3-6-2003. If the respondents want to withdraw or cancel the same, it was incumbent upon them to issue show-cause notice to the petitioners and consider their objection with regard to various grounds raised by them in the petitions. By meeting the aforesaid objection, respondents were duty bound to implement the 30% cut imposed by the State Government in a fair and reasonable manner and picking up certain class of employees from a particular division and taking action against them for cancelling their orders of regularisation without considering the cases of employees working in the other divisions may result in discrimination inasmuch as, a particular employee working in a particular division may be senior keeping in view his length of service and another employee in another division may be junior to many of the employees but as no action is taken in that division, he may reap the benefits of regularisation which is denied to a senior employee only because the cut imposed is implemented in a particular division by the respondents. To avoid such a discriminatory treatment, respondents should have considered the cases of each and every employee working through out the State in various divisions and thereafter if required

> should have imposed the cut in a fair and reasonable manner after following the principle of last come first go. So also, other statutory requirements to be followed in such cases. Mere passing of an order on telephone to deregularise the employees and to issue an order in the facts and circumstances of the cases, in the opinion of this Court is clearly unsustainable."

28. Further in the case of **Shrawan Kumar Jha** (supra), the Supreme Court in paragraph 3 has observed as under:-

> "3. By an order dated November 2, 1988, the Deputy Development Commissioner cancelled the appointments of the appellants. Mr. Ashok H. Desai, learned Solicitor General appearing for the respondents has contended that the appointments have been cancelled because the District Superintendent of Education had no authority to make the appointments, it was a device of by-passing the reservations and that the conditions which are part of the appointment order were not complied with. Mr. U. R. Lalit and Mr. A. K. Ganguli, learned Senior Advocates, appearing for the appellants have controverted these allegations and have dated that all these teachers were validly appointed and they had joined their respective schools. It is not necessary to go into all these questions. In the facts and circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground. As suggested by the learned Solicitor General, we direct that the secretary (Education), Government of Bihar, or to other person nominated by him should give an opportunity of hearing to the appellants and thereafter give a finding as to whether the

> appellants were validly appointed as Assistant Teachers. He shall also determine as to whether any of the teachers joined their respective schools and for how much duration. In case some of them joined their schools and worked, they shall be entitled to their salary for such period."

29. In view of the above enunciation of law, it is clear that the order passed by the authorities violating the principles of natural justice against the person and that order carries civil consequences, is not proper and such order is finally found unsustainable in the eyes of law.

30. The Supreme Court in case of **Gorkha Security Services Vs. Government (NCT of Delhi) and Others** reported in **(2014) 9 SCC 105**, has very clearly observed that law of blacklisting clearly provides an opportunity of following the principles of *Audi Alteram Partem* before taking such action and has held in Paragraph Nos.32 to 34, which read as under:-

> ***"The "Prejudice" Argument***
>
> **32**. It was sought to be argued by Mr. Maninder Singh, learned Additional Solicitor General appearing for the respondent, that even if it is accepted that the show-cause notice should have contained the proposed action of blacklisting, no prejudice was caused to the appellant in as much as all necessary details mentioning defaults/ prejudices committed by the appellant were given in the show-cause notice and the appellant had even given its reply thereto. According to him, even if the action of blacklisting was not proposed in the show cause notice, the reply of the appellant would have remained the same. On this premise, the learned Additional Solicitor General has argued that there is no prejudice caused to the appellant by non-mentioning of the proposed action of blacklisting. He argued that unless the appellant was able to show that non-mentioning of blacklisting as the proposed penalty has caused prejudice and has resulted in miscarriage of justice, the impugned action cannot be nullified. For this proposition he

referred to the judgment of this Court in Haryana Financial Corpn. v. Kailash Chandra Ahuja[10]: (SCC pp. 38, 40-41 & 44, paras 21, 31, 36 & 44)

> "21. From the ratio laid down in B.Karunakar[11] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot *automatically* be set aside.
>
> * * *
>
> 31. At the same time, however, effect of violation of the rule of audi alteram partem has to be considered. Even if hearing is not afforded to the person who is sought to be affected or penalised, can it not be argued that 'notice would have served no purpose' or 'hearing could not have made difference' or 'the person could not have offered any defence whatsoever'. In this connection, it is interesting to note that under the English law, it was held few years before that non-compliance with principles of natural justice would make the order null and void and no further inquiry was necessary.
>
> * * *
>
> 36. The recent trend, however, is of 'prejudice'. Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.
>
> * * *
>
> 44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show 'prejudice'. Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned Additional Solicitor General. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of blacklisting, the appellant in the show-cause notice has not caused any prejudice to the appellant. Moreover, had the action of black listing being specifically proposed in the show cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the appellant or do it for a lesser period in case the Department still wanted to black list the appellant. Therefore, it is not at all acceptable that non-mentioning of proposed blacklisting in the show-cause notice has not caused any prejudice to the appellant. This apart, the

> extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant.
>
> **34.** For the aforesaid reasons, we are of the view that the impugned judgment[3] of the High Court does not decide the issue in correct prospective. The impugned Order dated 11.9.2013 passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show-cause notice given to this effect before taking action of blacklisting against the appellant. We, therefore, set aside and quash the impugned action of blacklisting the appellant. The appeals are allowed to this extent. However, we make it clear that it would be open to the respondents to take any action in this behalf after complying with the necessary procedural formalities delineated above. No costs."

In the aforesaid case, the Supreme Court further held as under:-

> "No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice. When it comes to the action of blacklisting which is termed as "civil death" it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in provisions of NIT."

31. The similar view has been taken by Supreme Court in case of **Dharmpal Satyapal Limited Vs. Deputy Commissioner** reported in **(2015) 8 SCC 519**.

32. Considering the overall aspects so also the law laid down by the Supreme Court in the aforesaid cases, I am of the opinion that this is a fit case in which the order impugned and the opinion of the Committee constituted to enquire about

the requisite qualification of the petitioner has violated the principle of natural justice. As such, the said report and the subsequent order passed on the basis of said report is not sustainable in the eyes of law and therefore they are liable to be quashed.

33. *Ex consequentia,* this petition is **allowed.** The order impugned dated 26/31.08.2016 (Annexure-P/18) and order dated 07.12.2016 (Annexure-P/22) are set aside. A liberty is granted to the respondents that if they still require to proceed in the matter then they may do so after providing proper opportunity of hearing to the petitioner.

(Sanjay Dwivedi)
Judge

sudesh

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