
(1993) 08 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5660 of 1993

Jai Naresh Singh and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 27-08-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (1993) 2 PLJR 713

Hon'ble Judges : S.B. Sinha, J;R.N. Pd., J

Bench : Division Bench

Advocate : Shivaji Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In the application the petitioners have prayed for quashing of the order dated 20.5.1993 passed by the Chief Engineer, Central Design, Department of Water Resources, Patna (respondent no. 4) whereby and whereunder their appointment allegedly against 25 per cent quota of Class III posts has been cancelled. The fact of the matter lies in a very narrow compass.

2. The petitioners were appointed by the respondents in their work charge establishment. It is alleged that the services of the petitioners were regularised pursuant to a resolution dated 21.7.1975 issued by the State of Bihar. According to the petitioners, there exists a Government resolution whereby and whereunder 25 per cent posts of the employees working in Class IV can be appointed in class III posts. Pursuant to the said purported policy decision, a General Circular dated 29.7.1986 was issued inviting application from eligible candidates. The petitioners' name were allegedly forwarded and after verification thereof by the Appointment Committee, separate lists of different categories of Class III posts were prepared and the petitioners were appointed by order dated 18.1.1988. By reason of the impugned order dated 10.5.1993 contained in Annexure 5 to the writ petition, the said appointment of the petitioners have allegedly been cancelled.

3. Learned Counsel appearing on behalf of the petitioners has submitted that the impugned order must be held to be illegal and malafide insofar as the same cannot be given a retrospective effect and prior to the issuance thereof, neither any, notice to show cause had been issued and the principles of natural justice had also not been complied with. It is stated that the petitioners had continued to work despite issuance of the said order. Learned Counsel for the petitioners in support of his contention has placed reliance in the case of Narender Chadha and others vs. Union of India and others (1986)2 Supreme Court Cases 157 and Shrawan Kumar Jha and others versus State of Bihar and others [1991 Supp (1) Sup 330 : 1991 (1) PLJR 68 (SC)]. From a perusal of the order contained in Annexure 5 to the writ petition, it appears that therein inter-alia it has been stated as follows :

4. The petitioners in this writ application had not stated that the grounds stated in the aforementioned office order dated 10.5.1993 as contained in Annexure 5 is nonest. It has also not been contended by the Learned Counsel for the petitioners that the office order (Annexure 5) contains any error of record.

5. It is evident from a bare perusal of Annexure 5 to the writ petition that the appointment to Class III posts from among the employees of Class IV posts was required to be made upon compliance of certain pre-conditions laid down by the State in its various circular letters. It is evident that neither any selection committee was constituted nor any panel was prepared. Admittedly the petitioners were appointed by the order of respondent no. 4. Even in the letter of appointment dated 2.3.1988 as contained in Annexure 4/A to the writ petition, it appears that the same were purely provisional in nature and the same could have been directed, to be terminated without any prior notice. Further such appointments were not given effect to keeping in view of the seniority list. It was further stated therein that the petitioners were not to get any extra pay for such appointment.

6. It is now well known that the principles of natural justice are not to be complied with where the order of appointment is a nullity and violative of Article 16 of the Constitution of India. In Teja Prasad and Others Vs. The State of Bihar and Others , a Division Bench of this Court upon taking into consideration the various decisions of the Supreme Court of India including that of Shrawan Kumar Jha (Supra) held as follows:

It would appear from a bare perusal of Section 66B that the power has been conferred upon the State Government to determine the nature and number of posts, qualifications, mode of recruitment, conditions of service etc., of the personnel in the various co-operative societies. At the very outset I have briefly mentioned the back ground and the underlying object with which the provisions were incorporated in the statute book in 1982 and 1989. If in view of large scale illegal appointments made without following the established norms causing financial and administrative vagaries on account of inefficiency and over-staffing, provision was made to regulate the process of recruitment, conditions of service

etc., it cannot be said to be arbitrary. Conferring power upon the State Government to frame rules laying down and determining the mode of appointment etc. is not uncommon to service jurisprudence. The submission as to absence of any mechanism for determination of the contravention has no substance. A grievance of that nature could be made only if any adjudication was necessary with some element of discretion in the authority. But if the legislature itself provides and declares certain category of appointment void, nothing requires to be adjudicated. Rules of natural justice are not statutory rules, the application of which cannot be excepted. It is true that violation of rules of natural justice is itself a prejudice but if its exclusion is permissible even by necessary implication, I fail to understand how, for that reason, the provisions can be said to be arbitrary and, therefore, violative of Article 14. In certain cases bona fide appointee may also be deprived of their jobs, but their interests can be protected by issuing appropriate directions as, indeed, I propose to give in these cases.

7. In *Sheela Sinha vs. The State of Bihar and others* 1993 (1) : PLJR 378 this Court taking into consideration the various decisions held that when the facts are admitted, natural justice was not required to be complied with. In that case also, it was observed that for appointment in a Class IV posts, recruitment rules laid down in circular letter no. 1466 dated 3.11.1980 have to be followed, in terms whereof, a panel has to be prepared at the district level, upon following the procedures laid down therein. As the same was not done, this Court held that the petitioner's appointment being wholly illegal, she did not derive any legal right to continue in the said post. Yet recently this Court in the case of *Anil Phukan Vs. State of Assam*, held as follows :

In *M.L. Gupta and Others Vs. Instrumentation Ltd. and Others* upon taking into consideration various decisions of the Supreme Court and this Court it has held :

Article 16 of the Constitution of India provides that all citizens of India are entitled to get equal opportunity for the purpose of obtaining employment in State service.

In order to fulfill such a condition, it is necessary to consider the case of all citizens who are eligible to be appointed. For that purpose it is not only necessary to call for the names from the Employment Exchange, but the same in some cases, also requires due advertisement of posts in newspapers by notifying the vacancies and the requisite qualifications therefor so that all eligible candidates may apply for their appointment in the said posts.

It was further observed :

From the decision of the Supreme Court as also of this Court, as referred to hereinbefore, it will thus be evident that any appointment which was made by a person having no authority to do so or the appointments have not been made following the mandatory provisions of the Recruitment Rules and Articles 14 and 16 of the Constitution, such appointments should be held to be a nullity. In this

view of the matter, in my opinion, this Court in exercise of its writ jurisdiction cannot direct regularisation of services of the employees when the same would be violative of Articles 14 and 16 of the Constitution.

18. The principles of natural justice as is well known is based upon two basic principles viz Audi Alteram Partem and Nemo Debitus Esset Judex in Propria Causa. The principles of natural justice have been developed by the Apex Court from time to time adding new concepts therein. In some decisions the Apex Court has gone to the extent of holding that the principles of natural justice are embodied in Article 14 of the Constitution of India.

19. In Union of India vs. Tulsiram Patel reported in AIR 1985 S.C. 1416, the Supreme Court of India held :

Principles of natural justice are not creation of Articles 14 of the Constitution of India but merely they are constitutional guardian. The principles of natural justice can be traced their ancestry to ancient civilizations and long past history.

20. The Supreme Court in that case traced the history of the principles of natural justice in paragraphs 72 to 80 of the judgment and thereafter, discussed various principles involved therein in paragraphs 81 to 83, thereof.

The Supreme Court thereafter proceeded to consider the question as to how the said provisions have been interpreted by the Court.

The Supreme Court held :

"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject matter of that Article." Shortly put, the syllogism runs thus; violation of a rule of natural justice results in arbitrariness which is the same as discrimination, where discrimination is the result of State action, it is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

21. In Tulsiram Patel's case (Supra) the Supreme Court thereafter held that a Statutory provisions either specifically or by necessary implication may exclude any application of the principles of natural justice. The Supreme Court therefore, concluded that the principles of natural justice not only can be modified but also it can be excluded.

22. In Union of India (UOI) Vs. Col. J.N. Sinha and Another, it has been held:

But if on the other hand, a statutory provision either specific or by necessary

implication excludes the application of any or all the rules of principle of natural justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of exercise of that power.

23. Reference in this connection may also be made in R.S. Dass Ors. Vs. Union of India (UOI) and Others, .

24. Further, it is well known that there are certain exceptions to the principles of natural justice.

In case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, it has been held :

From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience of the principles of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order-decision on the rights of the person and attendant circumstances.

25. In National Institute of Mental Health and Nureao Sciences vs. K.K. Raman reported in 1992 S.C. 1806 it has been held that for selection or non-selection of a person in absence of a statutory requirement, the authority is under no legal obligation to record reason in support of its decision and even the principles of natural justice have no application in such a case.

26. The Sureme Court in the case of Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, held as follows :

When, therefore, the services of the appellants are to be terminated in view of the change in the position of law and not on account of the demerits of misdemeanor of individual candidate, it is not necessary to hear the individuals before their services are terminated. The rule of audi alteram partem does not apply in such cases and, therefore, there is no breach of the principles of natural justice. In the result, we are of the view that there is no merit in this case. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

27. It is, therefore, clear that in a case where the services of the employee is terminated owing to any misdemeanour on his part or his demerits, the principles of natural justice are required to be complied with.

28. Recently, the supreme Court in Baikuntha Nath Das and another Vs. Chief

District Medical Officer, Baripada and another, has held that before passing the order of compulsory retirement principles of natural justice are not required to be complied with nor even adverse remarks against the concerned employee are required to be communicated. The Supreme Court held :

Before parting with the case, we must refer to an argument urged by Shri R.K. Gurg. He stressed what is called, the new concept of Article 14 as adumbrated in Menka Gandhi and submitted on that basis that any and every arbitrary action is open to a judicial scrutiny. The general principle evolved in the said decision is not in issue here. We are concerned mainly with the question, whether a fact of principle of natural justice and audi alteram partem is attracted in the case of compulsory retirement. In other words the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retirement. Since we have held that the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the Government, there is no room for importing the facet of natural justice in such a case, more particularly when an order of compulsory retirement, is not a punishment nor does it involve any stigma.

29. In *Bijay Bharti Vs. State of Bihar* reported in 1983 PLJR 530, a Full Bench of this Court held :

Before considering the argument that the right of some of the petitioners to future appointment has been affected, it would be proper to consider as to what is the effect of saying that appointment is irregular. Reference in this connection may be made to two cases decided by Mathew, J, as a Judge of the Kerala High Court, the first case is that of *P. Kunhikrishnan V. State of Kerala* (15). There on facts it was found that the petitioner was ineligible for being appointed to the service. The impugned order was, therefore, held to mean that it was a termination of an appointment which was itself void. In O.P. No. 973 of 1968 the same learned Judge pointed out that the order in question only declared that the petitioner was not validly appointed to the post and that he should be reverted. The learned Judge observed :

It was not an order cancelling a valid or even a voidable order, it was merely a declaration that there has been no appointment of the petitioner to the post in the circumstance. I do not think that natural justice required that the petitioner should have been given an opportunity of being heard by the 1st or the 2nd respondent. I also do not think that in the circumstances there was any manifest injustice, so that inference under Article 260 required.

In *U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others*, it has been held that principles of natural justice are not required to be complied with in a case where a candidate had secured admission on the basis of forged certificate.

30. It has further been held by the Supreme Court that natural justice should be viewed in circumstantial flexibility *Union Carbide Corporation, etc., etc. Vs. Union*

of India, etc. etc., .

It is also well known that the principles of natural justice need not be complied with when it would result in futility. It is also a settled law that any appointment made in violation of Article 16 of the Constitution of India or made by a person having no jurisdiction would be a nullity.

31. The Supreme Court in a recent decisions in Ex. Capt. K. Balasubramanian and Others Vs. State of Tamil Nadu and Another, has held. "...This High Court has, in our opinion rightly held that the directions contained in orders dated 16th June, 1976 and June, 15, 1977 were invalid being contrary to the provisions contained in rule 35 of the General Rules. Since the said orders were invalid the petitioners would not claim any right on the basis of said orders and there was, therefore, no question of affording them an opportunity of hearing before passing the order dated 3rd March, 1980."

32. In Ram Krishna Verma and Others Vs. State of U.P. and Others, , it has been held that a party would not be entitled to his right of natural justice if undue advantage is obtained by protracting a proceeding somehow and nullifying the objective.

33. In S.L. Kapoor Vs. Jagmohan and Others, it has been held that although non-observance of the principles of natural justice is itself prejudicial but in that case also it has been observed :

Linked with this question is the question whether the failure to observe natural justice does at all matter if observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approved the non-observance of natural justice but because Courts do not issue futile writs.

8. In Narender Chadha (Supra) upon which strong reliance has been placed by the Learned Counsel, the Supreme Court was considering the matter of seniority. It was held that where there is a deliberate massive departure from the quota rule and the Rules confer power of relaxation on the Government and thus it was assumed that quota rule has been relaxed. In this case, no such power of exemption in the Government has been pointed out before. Shrawan Kumar (Supra) has been distinguished by this Court in many cases including the cases referred to hereinbefore. It is clear from the decisions of this Court that it has been consistently held by the Supreme Court that Shrawan Kumar (Supra) was rendered in the facts and circumstances of the case as they exist as to whether the disputed question was the word "authority" or not. Such is not the position here.

9. In this view of the matter, in my opinion, no case for interference of the impugned order has been made out. However impugned order as contained in

Annexure 5 to the writ application could not be given a retrospective operation. In this situation it must be held that the petitioners are entitled to salary for the period they have worked as Class III employees. Further it is observed that in view of the fact that there exist vacancies, the State should implement its own circular and fill up the vacant post at an early date. It is needless to say that as and when such step to fill up the vacant post by the State is taken into consideration, the cases of the petitioners in the event they apply therefor along with other eligible candidates may be taken into consideration. In the result, this writ application is dismissed but in the facts and circumstances of the case, I shall make no order as to costs.

R.N. Prasad, J.

I agree.