
(2008) 03 CHH CK 0015
In the Chhattisgarh High Court

Ku. Noorjahan

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 2 MPHT 84

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The petitioner, by this petition, challenges the validity of the order dated 12-1 -2006 (AnnexureP-5), whereby, appointment of the petitioner on the post of Urdu Shiksha Karmi Grade II in Nagar Panchayat, Gorella was cancelled on account of the facts that on scrutiny it was found that the process for selection was not done in accordance with rules. Further, order dated 3-1-2006 (Annexure R-I/7), issued by the respondent No. 3, i.e., Collector, Bilaspur, was also sought to be quashed.

2. The indisputable facts, in brief, are that pursuant to the advertisement dated 11-5-05 (Annexure P-I), the petitioner made an application for appointment on the post of Urdu Shiksha Karmi Grade II. The petitioner was selected and was posted at Government Middle School, Gorella vide order dated 17-6-05 (Annexure P-3). The petitioner, accordingly, joined as Urdu Shiksha Karmi Grade II in Government Middle School, Gorella on 30-6-05 (Annexure P-4).

3. The Collector, Bilaspur, on the basis of complaint made by one Shri Dwarka Prasad Soni and on the basis of enquiry report submitted by the Tehsildar, Pendra Road, Distt. Bilaspur, came to the conclusion that the recruitment process for the post of appointment on the post of Urdu Shiksha Karmi Grade II and Grade III was not followed in accordance with law and despite, their (sic : there) being stay of the recruitment process, the interview was conducted. Accordingly, the

Collector, Bilaspur, by order dated 3-1-06 (Annexure R-I/7) in Revenue Case No. , 23/2005-06 cancelled the selection process and directed the Chief Municipal Officer, Gorella, to conduct fresh selection process for appointment on the post of Urdu Shiksha Karmi Grade II, in accordance with law. Consequently, the impugned order dated 12-1- 06 (Annexure P-5) was passed.

4. Feeling aggrieved, the petitioner filed this petition, seeking a direction to quash the impugned order dated 12-1-06 (Annexure P-5) and order dated 3-1-06 issued by the respondent No. 3, i.e., Collector, Bilaspur.

5. Shri Indrasen Sahu, learned Counsel appearing for the petitioner, would submit that once the petitioner has been appointed on the post of Urdu Shiksha Karmi Grade II through proper selection process, selection process may not be quashed without affording an opportunity of hearing to the petitioner. The impugned order dated 12-1-06 was issued on the basis of report submitted by the Tehsildar conducted at the back of the petitioner. The respondent authorities have not applied their mind before passing the impugned order.

6. Shri A.S. Kachhwaha, learned Deputy Advocate General appearing for the State, per contra, would submit that on the basis of complaint filed by one Shri Dwarka Prasad Soni, the Additional Collector, Pendra Road, directed the respondent No. 4 on 8-6-05 (Annexure R-I/2) to conduct the recruitment process, in accordance with law, as there was a complaint made by one Shri Dwarka Prasad Soni and Shri Murari Lal Agrawal on 24-6-05. Three members committee was appointed to go into the recruitment process of Urdu Shiksha Karmi Grade II and Grade III as there were several complaints. On 18-7-05 (Annexure R 1/4), Special Secretary, Urban Administration Development Department, Govt. of Chhattisgarh, wrote a letter to all the Commissioners and Chief Municipal Officers, to stay the process of recruitment on the post of Urdu Shiksha Karmi immediately.

7. Shri A.S. Kachhwaha, learned Deputy Advocate General, would further submit that admittedly no opportunity of hearing to the petitioner was given as this is the basic requirement when punitive order is passed against the employee. However, the entire process of selection was vitiated, therefore, the select list and appointment thereof was cancelled without any notice.

8. It was found that contrary to the order dated 18-7-05 of the respondent No. 1, the respondent Nos. 4 and 5 proceeded with the process of recruitment and appointed the petitioner on the post of Urdu Shiksha Karmi Grade II. In the selection committee, in place of the Block Education Officer, the Assistant Project Officer was kept. A report of the Tehsildar (Annexure R 1/5) was submitted to the Sub-Divisional officer, in turn, he sent report to the Collector, Bilaspur (CG) on 5-12-05 (Annexure R 1/6) observing that the respondent Nos. 4 and 5 have not followed the process of recruitment in accordance with law and despite stay of the recruitment process, proceeded with the interview and appointed the petitioner on the post of Urdu Shiksha Karmi Grade II.

9. The respondent Nos. 4 and 5 have chosen not to file any return and make any submission during the course of hearing.

10. Be that as it may, in the present case, admittedly the petitioner was given appointment. She worked for more than six months, thus, she is entitled to opportunity of hearing which is the touchstone of the basic principle of natural justice and fair play in action.

11. The Hon'ble Supreme Court in case of S.K. Siddique Vs. Madhya Pradesh State Road Transport Corporation and another, , wherein the appointment of teachers were cancelled without giving them an opportunity of hearing, observed as under:

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 appellant 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 appellant could be passed without complying with the rules of natural justice.

12. The Hon'ble Supreme Court in case of D.K. Yadav Vs. J.M.A. Industries Ltd., , considering the concept of opportunity of hearing observed as under:

The cardinal point that has to be born in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. In other words application of the principles of the natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be inconformity with the principles of natural justice.

13. The said principle is reaffirmed by the Hon'ble Supreme Court in the matter of Basudeo Tiwary Vs. Sido Kanhu University and Others, , wherein it is held that:

The law is settled that non arbitrariness is essential facet of Article 14 forwarding the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alterant partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and

reasonable treatment.

14. Further, in the matters of Canara Bank and Others Vs. Shri Debasis Das and Others, , and Canara Bank Vs. V.K. Awasthy, , the Hon''ble Supreme Court observed as under:

The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. It is after all an approved rule of fair play and one of the most important principles of natural justice.

15. Applying well settled principles of law to the facts of the present case, it is crystal clear that the petitioner has been condemned unheard by issuing the impugned orders. The actions of the respondent authorities are contrary to well established principles of natural justice and fair play in action.

16. In view of the foregoing, the impugned order dated 12-1-06 (Annexure P-5) and 3-1-06 (Annexure R 1/7) are quashed.

17. The petition is allowed. However, the State Authorities may take appropriate action, if so advised, after following due process of law, affording an opportunity of hearing to the petitioner. No order as to costs.