

(1993) 09 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 1122 of 1993 (R)

Prabhat Kumar Roy

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Citation : (1993) 09 PAT CK 0042

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The petitioner in this application originally prayed for a direction upon the respondents to make payment of salary to him from December, 1990 till date and further directing them not to prevent the petitioner from working and/or from discharging his duties as Assistant Auditor. Subsequently an application for amendment of the writ petition has been filed wherein the petitioner has sought for issuance of an appropriate writ for quashing the notification dated 20-6-1993 issued by the Registrar, Ranchi University, terminating his services with effect from December, 1990 as contained in Annexure-13 thereto,

2. Petitioner is said to have been appointed as an Assistant Auditor in the scale of pay of RE. 785-1210 by the respondent University by office order dated 9-8-1989, which is contained in Annexure-1 to the writ application. Petitioner's father was Registrar of the University and prior to his superannuation he sought for permission of the Vice-Chancellor to proceed on earned leave perperator to his retirement and requested him to appoint his son, namely, the petitioner, who had passed M. Com. examination. Allegedly the aforementioned request was made in terms of a decision of the Syndicate providing for appointment of one of the dependents of an employee of the University on his retirement. The Vice-Chancellor considered the aforementioned request and allegedly as several sanctioned posts of Assistant Auditors were vacant, the petitioner was appointed in his post of Assistant Auditor. However, the payment of salary of the petitioner was stopped from December, 1990 Without any rhyme or reason or without

issuing any notice to show cause. The petitioner filed representation before the authorities of the University which are contained in Annexures-4, 4/1 and 5 to the writ application. According to the petitioner, although he had regularly been attending his duties, he was not being allowed to sign the attendance register since 18-1-1993.

3. A counter affidavit has been filed on behalf of the respondents wherein it was categorically stated that the petitioner was not appointed on a vacant sanctioned post which was mandatorily required in terms of Section 35 of the Bihar State Universities Act, 1976, and thus his appointment was absolutely illegal. It was submitted that the petitioner's father who was at the material time Registrar of the University made a proposal for appointment of the Vice-Chancellor and pursuant thereto the petitioner was appointed but the file relating to his appointment is not traceable. It has been submitted that despite the said fact the petitioner has annexed a xeroxed copy of the notes submitted by his father to the Vice-Chancellor and the notes of an Officer of the University thereupon which is contained in Annexure-3 to the writ application. It has further been contended that at the relevant time Dr. Lal Saheb Singh was the Vice-Chancellor and a large number of illegal appointment/ regularisation had been made in his time. The said matter was brought to the notice of the Chancellor by Dr. Amar Kumar Singh who succeeded him and the Chancellor directed him to take necessary action with regard to the numerous irregular appointments made by the Ex-Vice-Chancellor. Accordingly, a committee was constituted and pursuant of a report submitted by it in several decisions were taken by the University as a result whereof an office order was issued on 2-12-1990 pursuant whereof it was directed that no work should be taken from Class III and Class IV employees who had not been paid salary on or after 30-11-1988. It was further directed that those persons who had been paid salary after 30-11-1988 their appointments being in complete violation of the University Act would be cancelled and their services were directed to be terminated. A copy of the said order is contained in Annexure-A to the counter affidavit.

The Vice-Chancellor also wrote a letter to the Chancellor on 10-12-1990 informing him about the aforementioned actions and the Chancellor, approved the same by a letter dated 23-12-1990, copies whereof are contained in Annexure-B and B/1 to the counter affidavit. It has been stated that the petitioner did not work and/or was not allowed to work after the said order dated 12-10-1990 was issued but a formal order terminating his services was not served on him, as in fact the said matter was not brought to the notice of the Vice-Chancellor possibly because of the influence of the petitioner's father who was Registrar of the University at one time. It was submitted that when the petitioner submitted his representation dated 28-10-1992 the matter of his illegal appointment came to the knowledge of the present Vice-Chancellor but despite diligent search, the records of the appointment of the petitioner could not be traced out. The matter was, therefore, placed before the Vice-Chancellor for necessary orders and at that juncture the petitioner having received the scent

about the matter filed the writ application. It has been submitted that in the view of the illegal appointment of the petitioner, his services have been terminated by an order dated 23-6-1993 as contained in Annexure-C to the counter affidavit (Annexure-13). It was submitted that at the relevant time there was no vacant sanctioned post of Assistant Internal Auditor and in fact the father of the petitioner gave a complete wrong noting by reason of Annexure-3 to the writ application and an illegal appointment was made by Sri Lal Saheb Singh, the then Vice-Chancellor.

4. After the aforementioned counter affidavit was filed, the petitioner filed an application for amendment of the writ petition questioning the aforementioned order of termination dated 23rd June, 1993 as contained in Annexure-C to the counter affidavit. The Said order is contained in Annexure-13 to the application for amendment of the writ petition. After having heard the learned Counsel for the parties. We, allowed the said application for amendment and treated the same to be part of the writ petition.

5. Mr. S. B. Gadodia, learned Counsel appearing on behalf of the petitioner submitted that the stand of the University-to the effect that the petitioner was not appointed against the sanctioned vacant post is not correct. The learned Counsel has taken us through Annexure-8 and Annexure-9 of the reply to the counter affidavit and submitted that in fact the petitioner was appointed on a vacant post and the budget has also been directed to be prepared on that basis. It was further submitted that as the State of Bihar had sanctioned the budget in terms of the decision of the University, it does not lie in the mouth of the University to contend that the posts of the Assistant Internal Auditor were not sanctioned posts.

6. The petitioner in reply to the counter affidavit has further annexed several documents to show that he had filed applications for payment of salary as also applications for grant of leave. It has farther been contended by the petitioners that other persons who had been also appointed without following the procedures of the Bihar State Universities Act are being allowed to continue. Petitioner in this connection has drawn our attention to Annexure-12 series of the reply.

7. According to the learned Counsel, the purported office order as contained in Annexure-A to the counter affidavit whereby and whereunder a cut off date of 26-4-1989 was fixed has no relevance in the facts and circumstances of this case. Learned Counsel further submitted that as the impugned termination order dated 23-6-1993 as contained in Annexure-13 to the writ application was issued without giving a notice to the petitioner and without giving an opportunity of hearing, the said order must be held to be wholly illegal and without jurisdiction.

8. Mr. Gadodia has further submitted that the petitioner along with his representation as contained in Annexure-5 to the writ application had annexed a copy of the order dated 12-1-1993 passed by this Court in CWJC No. 2394 of

1993(R), Jitendra Shukla v. Ranchi University and Ors. wherein in similar situation this Court directed payment of salary of the petitioners.

9. Mr. Gadodia in support of his contention has relied upon Sumeshwar Prasad Verma and Ors. v. The State of Bihar and Ors. 1991 (1) BLJR 718, Prem Nath Singh v. The State of Bihar and Ors. reported in 1991 (2) BLJR 513 Raj Kishore Kumar Sinha v. State of Bihar reported in 1992 (2) BLJR 625 Awani Kant Jha v. State of Bihar 1992 (2) BLJR 736 Anil Kumar Singh v. State of Bihar reported in 1993 (1) BLJR 414 and submitted that as the impugned order as contained in Annexure-13 to the writ application was passed in violation of the principles of natural justice, the same must be yield to be wholly illegal and without jurisdiction.

10. Mr. M. Sohail Anwar learned Counsel appearing on behalf of Respondent University however, submitted that any appointment on a post which is not sanctioned by the State of Bihar as is mandatorily required u/s 35 of the Bihar State Universities Act, 1976 must be held to be illegal and without jurisdiction.

Learned counsel in support of his contention has relied upon Amrendra Kumar Thakur v. State of Bihar 1986 Labour and Industrial Cases 464, Bameshwar Pd. v. State of Bihar and Ors. 1986 LabIC 522.

11. Learned Counsel further submitted that any appointment which has been made in violation of the statutory rules and/or Article 16 of the Constitution of India, the same being wholly illegal and void ab initio the principles of natural justice are not required to be complied with.

Learned counsel in support of his contention relied upon:

1986 BLJR 873, Taja Prasad and Ors. v. State of Bihar 1992(2) BLJR 568 ; Vijay Kumar v. State of Bihar 1993(1) BLJR 99 ; M.L. Gupta and Ors. v. Instrumentation Ltd. reported in 1992(1) BLJR 137, Bihar State Board of Digambar Jain Religious Trust v. District Judge 1989 BLJR 138, Kamal Kumar Sinha v. Indira Gandhi Institute of Medical Sciences 1990(2) BLJR 465 Udai Kumar Sharma v. Registrar, Co-operative Societies 1989(2) BLJ 493.

12. The questions which, therefore, arise for consideration in this application are:

(1) Whether the petitioner was appointed on a post sanctioned by the State of Bihar in terms of Section 35 of the Bihar State University Act?

(2) Whether the impugned notification dated 23-6-93, whereby and whereunder the services of the petitioner were terminated could have been issued without complying with the principles of natural justice and in any event the same could have been given retrospective effect and retroactive operation?

(3) Whether in any event the petitioner is entitled to payment of his salary?

Re. Question No. 1

13. From-a-bare perusal of Section 35 of the Bihar State University Act, 1976, it

is evident that no appointment can be made on a post which is not sanctioned.

14. As indicated hereinbefore the respondents in paragraph 5 of the counter affidavit, which has been sworn by the Proctor of Ranchi University and Incharge of Legal Cell, it has clearly been stated that the petitioner was not appointed on a vacant sanctioned post. The petitioner in reply to the said counter affidavit, however, has stated that he was appointed on a vacant sanctioned post.

The petitioner in support of his contention has relied upon a statement for budget for the year 1987-88 showing therein that there has been 10 sanctioned posts of Assistant Internal Auditors. The petitioner has contended that at the relevant time when he was appointed there was only one Assistant Internal Auditor and 9 posts were vacant. However, from Annexure-8 of the reply to the counter affidavit, it appears that there were sanctioned posts of 8 Assistant Internal Auditors as Grade III staff in the year 1987-88. However in the arrears-claim of previous years as contained in Annexure-9 to the writ applicant, the name of one P.K. Roy appears to have been shown as merely an Assistant and in the column under the heading Internal Audit Assistant, the petitioner's name does not appear. Annexure-9, however, does not show that the entries made therein were in relation to the employees who were appointed against vacant sanctioned post. Further even as against the said entry of Sri P.K. Roy it was shown that the said employee was in the scale of pay of Rs. 1,500-2750 whereas according to the petitioner himself he was appointed in the scale of pay of Rs. 785-1210. There is also nothing to show that at the relevant time any post of internal auditor was lying vacant. There is absolutely no reason to disbelieve the statements made in the counter affidavit to the effect that the petitioner was not appointed on a vacant sanctioned post and his appointment was obtained by his father on giving to the then Vice-Chancellor.

15. From the notification dated 9-8-1989 as contained in Annexure-1 to the writ application, whereby the petitioner was appointed, it does not appear that he was appointed against a vacant sanctioned post. Further from the notification itself it would appear that he was appointed on a temporary basis. If the post in which the petitioner was appointed was not a vacant one, there can be no doubt whatsoever that his appointment was wholly Invalid and the University could ignore the same. The petitioner has not been able to show that in fact 10 posts of Assistant Internal Auditor were sanctioned by the State keeping in view the fact that the petitioner's father was Registrar of Ranchi University, the petitioner could have filed such documents.

16. In *Amrendra Kumar Thakur v The State of Bihar*, reported in 1986 Labour and Industrial Cases 464, it was held that if a person has been appointed to post not created with prior sanction of the State Government nor appointed with prior approval of the State Government the University could ignore the appointment of the said employee as the said employee were not appointed in the eyes of law.

17. In *Bameshwar Prasad v. State of Bihar* reported in 1986 Labour and

Industrial Cases 522, a Division Bench was considering the question as to whether the termination of an employee whose appointments had not been made to the posts sanctioned nor approved by the University was legal or not. It was held that the staffing pattern is just a guideline for the University and the State Government; and the same even if approved by the University cannot help the petitioner unless the posts are sanctioned. The Division Bench, inter alia, relied upon the decision of this Court in Amrendra Kumar Thakur (supra). In this view of the matter, it must be held that any appointment made in violation of Section 35 of the Bihar State Universities Act must be held to be illegal and thus void ab initio.

18. In any view of the matter, in view of the fact that the question is a disputed question of fact, this Court in exercise of its writ jurisdiction cannot determine the same.

Re Question No. 2

19. Even the petitioner himself in his application has clearly stated as to how and in what manner he was appointed. The petitioner admitted that his father was Registrar and prior to his retirement he issued a note sheet to the Vice-Chancellor praying to go on earned leave preparatory to retirement, he requested the Vice-Chancellor to consider the matter for appointment of his son in University service pursuant to the decision of the Syndicate in this regard. In that note-sheet itself it was mentioned that he may be permitted to proceed on earned leave preparatory to his retirement and his prayer for regarding his son should be favourably considered.

In that note-sheet the following endorsement "Registrar since there are several problems and heavy pressure of work, the V. C. desires that you should not proceed on leave preparatory to retirement. He has, however, asked to your son to submit his application for consideration", appears to have been made.

20. The petitioner evidently was appointed after he submitted an application pursuant thereto. The petitioner in his writ petition as also in his reply to the supplementary affidavit has not contended that prior to his appointment, the procedures therefore as laid down in the Recruitment Rubs framed under the University Statutes, namely, open advertisement, constitution of Selection Committee and interview etc. were followed or the requirements of Articles 14 and 16 of the Constitution of India were complied with.

21. The respondents in their counter-affidavit categorically stated that the petitioner's father who was Registrar of the University at the relevant time was the moving force. The petitioner in reply to the statements made by the University to the aforementioned effect in paragraph 13 of the counter-affidavit did not specifically deny that there had been no open advertisement, no selection committee was constituted nor any interview had been held. He, however, vaguely asserted that the appointments are made in the University in similar fashion and for example he has annexed the office order/notification issued from

time to time by the University in terms whereof large number of persons were appointed and/or regularised in respect of whom no advertisement was made. As the assertion of the respondents to the effect that in appointing the petitioner the Recruitment Rules had not been followed, in so far as no open advertisement has not been issued nor the petitioner was interviewed by the Selection Committee, it must be held that there has been a clear violation of the Recruitment Rules as also the provision of Articles 14 and 16 of the Constitution of India.

22. The Supreme Court of India as also this Court times without number have held that such appointments are nullities. In terms of Article 16 of the Constitution of India all persons eligible, are entitled to be considered for appointment. A backdoor appointment in violation of the Recruitment Rules as also the provisions of Article 16 of the Constitution of India cannot be encouraged. Further in this case the petitioner himself has categorically admitted that his case for appointment was considered by the Vice-Chancellor at the instance of his father on the ground that his father was on the verge of superannuation. It is now well-known that an employment granted to a son upon superannuation of his father is violative of Articles 14 and 16 of the Constitution of India. Thus, even if any such decision has been taken by the Syndicate, the same must be held to be ultra vires Articles 14 and 16 of the Constitution of India.

Reference in this connection may be made to. *Yogender Pal Singh and others Vs. Union of India* others, ; *Employees in relation to the Management of Bhowra (N) Colliery of BCCL v. Their Workmen and Anr.* reported in 1993(1) BLJR 592.

23. It is admitted by the petitioner himself that his appointment was initiated on the basis of the note-sheet given by his father to the Vice-Chancellor which is contained in Annexure-3 to the writ application. The petitioner, therefore, must be held to have admitted by necessary implications that the process of appointment was not in accordance with the statute framed by the University.

24. In this situation, there cannot be any doubt that there is violation of the recruitment rules of the University as also the provisions of Article 16 of the Constitution.

As indicated hereinbefore, the only Contention of the petitioner in his reply to the counter-affidavit on behalf of the respondent-University in this behalf was that such appointments has been made by the University and the said appointees had been retained in service.

The petitioner, however, admits that the University itself has made out a cut off date for that purpose namely, 26-4-1989, as would be evident from one of the questions formulated in support of this application in relation thereto as is evident from sub-para 3 of paragraph 2 of the writ application,

25. Mr. Anwar, learned Counsel appearing on behalf of the University has, as

noticed hereinbefore, produced before us an order passed by the Supreme Court on 25-9-1991 in writ application (Civil) No. 409/1991-Bihar State University and College Employees Federation v. The State of Bihar and Ors. wherein the following order has been passed:

After hearing learned Counsel for the parties, we direct the respondents to consider the petitioner's case for absorption strictly in accordance with the terms and conditions of the agreement entered into between the Bihar State Universities and Colleges Employees Federation and the State Government on 26-4-1989 the terms and conditions of which are incorporated in the Government's letter dated 1st May, 1989 notwithstanding the directions issued by the University in its letter dated 9th March, 1991. It is made clear that the respondent are free to terminate the services of those who are not absorbed in accordance with the staffing pattern and other conditions contained in the agreement. The Ranchi University will take immediate steps to determine the staffing pattern and other details in accordance with the agreement and forward the list within two months to the State Government and the latter will consider the same and issue orders within one month thereafter. This order would apply only to the petitioners. The writ petition is disposed of accordingly.

26. It is, therefore, clear that the University had been retaining the services of such persons who had been appointed prior to 26-4-1989 pursuant to the aforementioned order passed by the Supreme Court of India.

In this situation, in our opinion, it cannot also be said that the petitioner has been discriminated against by the University.

27. In any event, the petitioner cannot take the advantage of the fact that some persons who were illegally appointed are continuing in service of the University inasmuch as it is well known that Article 14 of the Constitution, merely envisages "equality before law and equal protection of law". Therefore, Article 14 does not extended to an illegality committed by the State within the meaning of Article 12 of the Constitution, nor can a person claim himself to be put in the same category who had been employed by reason of an illegal acts committed by the State. It is well known that for the purpose of obtaining a writ of or in the nature of mandamus, the petitioner must satisfy the Court about existence of a legal right in himself.

28. The question which now arises for consideration is as to whether the petitioner was entitled to an opportunity of being heard or not.

In view of the findings as recorded hereinbefore, there cannot be any doubt that the appointment of the petitioner was a nullity. In that view of the matter, in our opinion, the question of complying with the principles of natural justice does not arise.

This aspect of the matter has recently been considered in details by a Division Bench of this Court in Sitaram Thakur v. State of Bihar reported in 1993(2) BLJR

140 wherein many other decisions have been taken into consideration and therefore, instead referring to all the decisions cited at the Bar, the following passage from the said judgment may be quoted:

15. In *Raj Kishore Kumar Sinha v. State of Bihar* reported in 1992(2) BLJR 625 upon which also a strong reliance has been placed by Mr. Singh, the Full Bench did not decide any question whatsoever. No. reason has also been assigned by the Full Bench nor did it consider the effect of various other Supreme Court decisions.

In that case the Full Bench itself held:

It is not necessary for us to go into the larger issue as to whether the principle of natural justice would apply where the initial appointment has been made in violation of Article 16 of the Constitution of India for the simple reason that in the present case upto now there has been no formal order of termination of service.

16. It is relevant to note that recently S. N. Jha, J. speaking for the Division Bench in *Teja Prasad v. State of Bihar* reported in 1992(2) PLR 568 has held that the principles of natural justice are not required to be complied with when the appointment had been made in violation of the provisions of the statute, although His Lordship was a party to the Full Bench in *Raj Kishore Singhs'* case.

17. In *M. L. Gupta v. Instrumentation Ltd. and Ors.* reported in 1992(1) PLR 137 upon taking into consideration various decisions of the Supreme Court and this Court it has been 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 fulfil 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 therefore so that all eligible candidates may apply for their appointment in the said posts.

It was further observed:

From the decisions 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 which 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 the 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 debito esse iudex 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 and Another Vs. Tulsiram Patel and Others*, , the Supreme Court of India held:

Principles of natural justice are not creation of Article 14 of the Constitution of India but merely they are constitutional guardian. The principles of natural justice can be traced heir 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 recognised 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 reposit 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 *Tulsi Ram Path'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 provisions 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 to R.S. Dass Ors. Vs. Union of India (UOI) and Others, .

24. Further, it is well-known that there are certain exception 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 (sic) 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 Neuro Science v. K.K Raman reported in 1992 SC 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 Supreme Court in the case 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 the view of the change in the position of law and not on account of the demerits of misdemeanour of individual candidates, it is not necessary to hear the individuals before their services are terminated. The rule of audi alter am 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 3 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 Sri R K. Garg. 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 judicial scrutiny. The general principle evolved in the said decision is not in issue here. We are concerned mainly with the question whether a Facet of principle of natural justice *audi alteram partem* is attracted in the case of compulsory retirement. In other words, the question is whether action 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 said fact 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 v. 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 the 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*. 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 circumstances 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 decision 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 patty would not be entitled to his right of natural justice if undue advantage is obtained by protracting a proceeding some how 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 of the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Whereon 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.

Reference in this connection may also be made to *Madhuri Kumar v. State of Bihar* reported in 1993 (2) PLJR 330.

29. It is relevant to mention in this connection that in another recent decision in *Vijay Kumar v. State of Bihar* reported in 1993 (1) PLJR 99, this Court after considering a large number of decision, has held that the State as an employer is not bound to recognise any appointment made by its servant ignoring the mandatory provisions of recruitment rules as also Article 16 of the Constitution of India. The same principles have again been reiterated in *Dr. Nityanand Prasad Gupta v. The State of Bihar and Ors.* reported in 1993 (2) BLJR 221.

30. The decision cited by Mr. Gadodia, may now be considered.

In *Premnath Singh v. State of Bihar* 1991 (2) BLJR 513 this Court was considering the provision of Medicinal and Toilet Preparations Excise Duties Act, 1955 and it was held that the prayer of the petitioners for renewal of the licence under the aforementioned Act could not have been based only on an adverse inspection report without giving an opportunity to the affected person to explain

or communicate the grounds on which the licensing authority proposed not to renew the licence. In that case, it was held that as the order was not in accordance with law, the same was illegal.

In *Raj Kumar Sinha v. State of Bihar* reported in 1992 (2) BLJR 625 the earlier decision of this Court as also the Supreme Court of India have not been noticed and distinguished in *Sitaram Thakur's* case (supra). The aforementioned decision is, therefore, no binding on this Bench.

Anil Kumar Singh v. State of Bihar reported in 1993 (1) BLJR 414 also has no application to the facts and circumstances of the case in hand, not any binding ratio has been laid down therein with regard to the principle of natural justice. In that case, the Supreme Court was considering the matter of appointment on compassionate ground.

31. For the reasons aforementioned, it will not be held that the purported appointment of the petitioner was wholly illegal and thus he does not have any legal right to continue in service.

32. In the facts and circumstances of the case, as noticed hereinbefore, there cannot also be any doubt that the petitioner's father was the moving force behind the said illegal appointment. The appointment of the petitioner was evidently obtained by adopting back door method, It is also evident from the statements made in the counter affidavit that for some undisclosed reasons and probably, owing to the influence of the petitioner's father, even the decision taken by the Vice-Chancellor in terms of the recommendations of the Committee was not complied with in the case of the petitioner and the order of termination was not served upon him.

33. We have, therefore, no doubt in our mind that not only the appointment of the petitioner but also his continuance in service was possibly because of acts of omissions and commissions on the part of the employees of the University presumably at the behest of his father,

34. For the reasons aforementioned the petitioner is not entitled to any relief as prayed for in this application. We, however, make it clear that the petitioner in the facts and circumstances of the case, would be entitled to the wages for the period, he has actually worked.

35. This application is, therefore, dismissed with the aforementioned observations, but without any order as to costs.

Narayan Roy, J.

36. I agree.