

GAHC040010052021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 340/2021

1:Likha Asum
Daughter of Likha Epa,
Resident of Tom Village, P.O Deed, P.S Ziro, Dist Lower Subansiri District.
Arunachal Pradesh 791120

VERSUS

1:THE STATE OF AP and 2 Ors
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Con County,
Itanagar, Arunachal Pradesh. PIN 791111

2:The Secretary
District Administration Department
A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

3:The Deputy Commissioner
Lower Subansiri District
Arunachal Pradesh. PIN 79112

Advocate for the Petitioner : M Chanda

Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 344/2021

1:Taya Yaja
Daughter of Taya Tara

Resident of Village Taya Simla

P.O and P.S Raga
Dist. Kamle.
Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and 2 Ors
Represented by the Chief Secretary
Govt. of Arunachal Pradesh
Con County
Itanagar
Arunachal Pradesh. PIN 791111

2:The Secretary
District Administration Department
A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

3:The Deputy Commissioner
Lower Subansiri District

Arunachal Pradesh. PIN 791120

Advocate for the Petitioner : M Chanda
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 346/2021

1:Chukhu Tamar
Son of Shri Chukhu Bonga

Resident of Village Yazali
P.O and P.S Yazali
Dist Lower Subansiri.
Arunachal Pradesh 791112

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Chief Secretary
Govt. of Arunachal Pradesh

Con County
Itanagar
Arunachal Pradesh. PIN 791111

2:The Secretary
District Administration Department
A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

3:The Deputy Commissioner
Lower Subansiri District
Arunachal Pradesh. PIN 791120

Advocate for the Petitioner : M Chanda
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 342/2021

1:Bini Arun
Son of Shri Bini Tarh

Resident of Village Kalaptukar

P.O and P.S Dollungmukh

District Kamle
Arunachal Pradesh. PIN 791119

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Chief Secretary

Govt. of Arunachal Pradesh
Con County
Itanagar

Arunachal Pradesh.
PIN 791111

2:The Secretary
District Administration Department

A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

3:The Deputy Commissioner
Lower Subansiri District
Ziro
Arunachal Pradesh. PIN 791120

Advocate for the Petitioner : M Chanda
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 343/2021

1:Rintu Dey
Son of Shri Narayan Dey

Resident of Village OLD MEDICAL COLONY

P.O and P.S Ziro
District LOWER SUBANSIRI

PIN 791120.
M/No. 9774890655

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Chief Secretary
Govt. of Arunachal Pradesh
Con County
Itanagar
Arunachal Pradesh. PIN 791111

2:The Secretary
District Administration Department
A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

3:The Deputy Commissioner
Lower Subansiri District
Ziro
Arunachal Pradesh
PIN 791120

Advocate for the Petitioner : M Chanda
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 345/2021

1:Padi Pubyang
Wife of Shri Chukhu Panior
Resident of Village Rano
P.O and P.S Doimukh
Dist. Papum Pare.
Arunachal Pradesh 791112

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Chief Secretary
Govt. of Arunachal Pradesh
Con County
Itanagar
Arunachal Pradesh. PIN 791111

2:The Secretary
District Administration Department
A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

3:The Deputy Commissioner
Lower Subansiri District
Arunachal Pradesh. PIN 791120

Advocate for the Petitioner : M Chanda
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 341/2021

1:Chuku Panior
Son of Late Chukhu Takar

Resident of Village Rono

P.O and P.S Doimukh

District Papum Pare

Arunachal Pradesh. PIN 791112.
M/No. 9862235610

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Chief Secretary

Govt. of Arunachal Pradesh

Con County
Itanagar
Arunachal Pradesh.
PIN 791111

2:The Secretary
District Administration Department

A.P Civil Secretariat
Itanagar Capital Complex. Arunachal Pradesh. PIN 791111

Advocate for the Petitioner : M Chanda
Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 30-05-2023

Heard Mr. M. Chanda, learned counsel for the petitioners. Also heard Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

2. In all the 7(seven) writ petitions, the petitioners have put to challenge the Memorandum, dated 5th September, 2021, issued by the Chief Secretary, Government of Arunachal Pradesh under the signature of the Secretary, District Administration, Government of Arunachal Pradesh, vide DA-11018/2021-Br.DA/256 A and order dated 6th October, 2021, issued by the Deputy Commissioner, Lower Subansiri District, Ziro, vide No. E-

8704/2013/Vol-III.

3. Since all the writ petitions challenges the same Office Memorandum and the order of the State authorities, this order shall dispose of all the 7 (seven) writ petitions.

4. The memorandum dated 5th September, 2021, is a memorandum, *inter alia* directing the Deputy Commissioner, Lower Subansiri District to initiate discontinuation and termination of all such illegally appointed persons listed at serial no. 1 to 9, therein and Order, dated 6th October, 2021, is an order, terminating the services of the petitioners.

5. Petitioner in WP(C)340/2021 was appointed as LDC on 29.04.2020 by the Deputy Commissioner, Lower Subansiri District, Ziro, likewise, petitioners in WP(C)341/2021, WP(C)342/2021, WP(C)343/2021, WP(C)344/2021, WP(C)345/2021 and WP(C)346/2021, were appointed as Upper Division Clerk, Handyman, Driver, Peon, Lower Division Clerk and Driver on 29.04.2020, 22.11.2018, 07.08.2019, 05.09.2019, 19.11.2019, 29.04.2020 and 05.09.2019, respectively. Though the petitioners were appointed as above, their services were terminated vide impugned order issued by the Additional Deputy Commissioner, Lower Subansiri District, Ziro, for Deputy Commissioner, Lower Subansiri District, Ziro, dated 6th October, 2021.

6. It is the case of the petitioners that the petitioners were appointed, as above, on an application submitted by the petitioners to the Deputy Commissioner, Lower Subansiri District, Ziro, pursuant to which there was an oral interview. There was, however, no public advertisement for the post in which the petitioners were appointed.

7. Challenging the termination order, dated 6th October, 2021, the petitioners contend that the impugned order of termination, dated 6th October, 2021, has been issued by the Deputy Commissioner, Lower Subansiri District, Ziro, terminating the services of the petitioners after an enquiry regarding the appointment of the petitioners was made by the authorities behind the back of the petitioners and also without issuing Show-cause notice to the petitioners to defend their appointment, which is a violation of the principle of natural justice. The petitioners further contends that the impugned order of termination, dated 6th of October, 2021 has been issued by the Deputy Commissioner, in violation of the appointment orders of the petitioners, which provides for termination at any time after giving 1 (one) month notice from either side or one month's pay in lieu thereof. The petitioners also contends that there are other similar such employees, whose services have not been terminated but the petitioners have been terminated from service by the impugned order dated 6th October, 2021 on a pick and choose basis.

8. The State respondents have contested the case by filing a counter-affidavit by the respondent no. 2, wherein, it has been contended that the impugned orders of appointment have been issued by the then Deputy Commissioner, Lower Subansiri District, Ziro, Shri Chuku Takar, in violation of the Recruitment Rule, besides in contravention of the Government Office Memorandum DR-68-2018, dated 29.08.2018, by which Office Memorandum, appointment/recruitment of Group-C post was put on hold till establishment of Arunachal Pradesh Staff Selection Board and also the notification no. AR-68/2018, dated 15.11.2018, whereby, Arunachal Pradesh Staff Selection

Board was constituted for recruitment of Group-C post. It has also been pointed out that the then Deputy Commissioner, Lower Subansiri District, Ziro, in violation of the Office Memorandum, dated 29.08.2018 and notification, dated 15.11.2018, had illegally appointed 9 (nine) persons named in the impugned termination order, dated 6th October, 2021, which included his son.

9. It has been further stated in the counter-affidavit that since the appointments of the petitioners were made by the Deputy Commissioner in violation of the OM, dated 29.08.2018, an Enquiry Officer was appointed vide order dated 21st December, 2020, issued by the Chief Secretary, Government of Arunachal Pradesh, Itanagar, under the signature of the Secretary, District Administration, Government of Arunachal Pradesh, vide Memo No. DAD-17/93(Vol-II)/253-236 to make an enquiry and submit a report regarding the appointments made by the Deputy Commissioner, Lower Subansiri District, Ziro, pursuant, to which, an enquiry report was submitted by the appointed Enquiry Officer on 22.02.2021, whereby, the appointment of the petitioners were found to have been made without following the due process of law and it was in pursuance of the report submitted by the Enquiry Officer that the petitioners have been terminated from their services vide the orders impugned in the writ petitions.

10. The petitioners have filed an affidavit-in-reply to the counter-affidavit filed by the State. In the reply filed by the petitioners, the petitioners have not disputed the State respondent's contention in the counter-affidavit that the petitioners were appointed by the Deputy Commissioner, Ziro in contravention of the OM, Dated 29.08.2018 and without following the due

process of selection. While not denying the contention of the State respondent in the counter-affidavit, all that the petitioners have stated in paragraph-3 of the reply, is to mention the names of other such appointments made without following the due process of selection, who have been allowed to continue in the service. The petitioners thus contends that while allowing to continue in the service the similar appointments made to other persons as indicated in paragraph-3 of the affidavit, the petitioners have been selectively terminated from service by the respondent authorities.

11. Mr. Chanda, learned counsel for the petitioners have argued that the impugned termination of services of the petitioners have been issued without issuing a Show-cause notice to the petitioners to defend their appointment and therefore, the same is violation of principle of natural justice, besides the termination order having been issued in violation of the terms of the appointment order of the petitioners which provides for giving one month notice or one month's pay in lieu thereof. He further submits that since impugned termination have been issued in violation of the principle of natural justice as well as the terms of the appointment order, the same requires to be interfered with by this Court.

12. In support of his contention that termination order without an opportunity of hearing is bad in law, Mr. Chanda, learned counsel for the petitioners have relied on a decision of the Supreme Court in the case of ***Shrawan Kumar Jha and Ors. vs. State of Bihar and Ors.***, reported in ***1991 Supp (1) SCC 330***; Judgment and order of this Court, ***dated 17.08.2022***, passed in ***WP(C)243/2022*** and order, ***dated 31.08.2022*** passed in ***WP(C)361/2021***.

13. On the other hand, Mr. S. Tapin, learned Senior Government Advocate has argued that since the appointment of the petitioners were made by the Deputy Commissioner, Ziro, in violation of the OM, dated 29.08.2018, by which Office Memorandum, appointment/recruitment of Group-C post was put on hold till establishment of Arunachal Pradesh Staff Selection Board and also in the enquiry made by the appointed Enquiry Officer, it had been found that the appointment of the petitioners were made without following the due process of law, the termination of the services of the petitioners without issuing notice to the petitioners was justified act by the respondent authorities, as in the instant case, the same has been conclusively found by the appointed Enquiry Officer, to have been made without following the due process of law.

14. In support of his contention, Mr. Tapin, learned Senior Government Advocate has referred to the decision of the Hon'ble Supreme Court in the case of ***M.C. Mehta vs. Union of India and Ors.***, reported in ***(1999) 6 SCC 237.***

15. Rival contentions advanced at the bar have received due consideration of the Court.

16. Upon hearing the learned counsels for the parties and on perusal of the materials available on record, it has remained undisputed that the Chief Secretary to the Government of Arunachal Pradesh had issued an Office Memorandum, dated 29.08.2018, vide memo No. AR-68/2018, whereby, it had directed that the recruitment of officials of Group-C and MTS should be put on hold till a decision in respect of the Staff Selection Board Bill being presented in the ensuing Assembly Session for constituting the Staff

Selection Board is taken/approved/notified. It has also not been disputed that the Arunachal Pradesh Staff Selection Board was established by a notification no. AR-68/2018, dated 15.11.2018 and the petitioners were appointed on 29.04.2020, 22.11.2018, 07.08.2019, 05.09.2019, 19.11.2019, 29.04.2020 and 05.09.2019, respectively. The appointments of the petitioners are all subsequent to 15.11.2018, which is the date of establishment of Arunachal Pradesh Staff Selection Board. The Arunachal Pradesh Staff Selection Board has been constituted for recruitment of Group-C staffs and Multitasking Staff. It has also remained undisputed that on a report submitted by the Deputy Commissioner, Lower Subansiri District, Ziro, on 13.08.2020 to the effect that the 9 (nine) posts of Group-C and Multitasking Staff (MTS) under the District Administration Department in the establishment of the Deputy Commissioner, Lower Subansiri District, Ziro, have been allegedly appointed illegally on regular basis in contravention of Government OM No. AR-68/2018/306, dated 29.08.2018, Shri Swapnil M. Naik, IAS, Secretary (Textiles, Handicraft and Civil Aviation), Govt. of Arunachal Pradesh, was appointed as an Officer to enquire into the alleged illegal appointment of Group C and MTS, vide order dated 21.12.2020, issued by the Chief Secretary, Government of Arunachal Pradesh, under the signature of the Secretary, District Administration, Govt. of Arunachal Pradesh, on the following terms of reference:

- (i). Whether the recruitment/appointment have been done in contravention to the OM No. AR-68/2018 dated 29.08.2018?
- (ii). Whether the appointment/recruitment have been made after constitution of Arunachal Pradesh Staff Selection Board?

(iii). Whether the appointment/recruitment have been made against substantive/regular posts? If yes, how posts had fallen vacant.

(iv). Whether recruitment/appointment have been done with due process of recruitment Rules? If not, how and in what manner recruitment have been done?

17. Pursuant thereto, the appointed Enquiry Officer has submitted a report dated 22.02.2021 [Annexure IV (B) to the counter-affidavit filed by the State].The report dated 22.02.2021 submitted by the appointed Enquiry Officer, is reproduced hereinbelow:

CONFIDENTIAL

**GOVERNMENT OF ARUNACHAL PRADESH
O/o SECRETARY (TEXTILES, HANDICRAFTS AND CIVIL AVIATION)
CIVIL SECRETARIATE, ITANAGAR**

REPORT ON ILLEGAL APPOINTMENT ON REGUAR BASIS OF NINE POSTS OF GROUP C AND MULTI-TASKING STAFF (MTS) UNDER DISTRICT ADMINISTRATION, LOWER SUBANSIRI

With reference to the Govt. order No. DAD-17/93(Vol-III)/233-236 dated Itanagar, the 21st December 2020, it may be noted that the undersigned was on Earned Leave till 10th January, 2021 and hence received the above order only after return from leave. Based on interaction with DC, Ziro Ms. Swetika Sachan and the documents obtained from her officer, please find herewith my conclusions/report regarding the nine illegal appointments made in the Lower Subansiri District administration in contravention to the Govt. OM No. Ar-68/2018/306 dated 29/08/2018 against various Group C and Multi-Tasking staff posts.

1. Whether the recruitment/appointment have been done in contravention to OM No AR-68/2018 dated 29/08/2018 ?

- **Yes, all the appointments were made after the issue of OM No AR-68/2018 dated 29/08/2018 ?**

- Details table below :

SL. NO.	Name of the Appointee	Appointed as	Date of Appointment
1.	Shri Chuku Panior	UDC	22/11/2018

2.	Smti Likha Asum	LDC	29/04/2020
3.	Smti Padi Pubyang	LDC	29/04/2020
4.	Shri Chuku Tado	Handyman	05/11/2018
5.	Shri Bini Arun	Handyman	07/08/2019
6.	Ms. Taya Yaja	Peon	19/11/2019
7.	Ms. Toko Mama	Peon	30/04/2020
8.	Shri Rintu Dey	Driver	05/09/2019
9.	Shri Chuku Tamar	Driver	05/09/2019

- The appointment date is wrongly mentioned as 05/11/2020 in the order dated 21st December, 2020 issued to undersigned by GA Department.

2. Whether the appointment/recruitment have been made after constitution of Arunachal Pradesh Staff Selection Board?

- Yes, all the appointments were made after the constitutions of Arunachal Pradesh Staff Selection Board vide Notification dated 15th November, 2018.

3. Whether the appointment/recruitment have been made against Substantive/regular posts? If yes, how posts had fallen vacant.

- Yes, all the appointment/recruitment have been made against Substantive/regular posts.

The details on the vacancies of the respective posts are tabled below:

Sl. No.	Name of the Appointee	Appointed as	Date of Appointment	Appointment against resultant vacancies	Date of Vacancy
1.	Shri Chuku Panior	UDC	22/11/2018	Smt Nani Jailyang, availed VRS	31/10/2018
2.	Smti Likha Asum	LDC	29/04/2020	Shri Michi Tama, promoted to UDC	27/04/2020
3.	Smti Padi Pubyang	LDC	29/04/2020	Late Bamin Joya	17/09/2019
4.	Shri Chuku Tado	Handyman	05/11/2018	Shri Tado Ram, promoted to driver	23/10/2018
5.	Shri Bini Arun	Handyman	07.08/2019	Late Kipa Kai	14/02/2019
6.	Ms. Taya Yaja	Peon	19/11/2019	Smti Kime Yager, (retired)	31/08/2019
7.	Ms. Toko Mama	Peon	30/04/2020	Smti Nani Dumri (Terminated due to prolonged absence)	24/04/2020

8.	Shri Rintu Dey	Driver	05/09/2019	Late Pradip Chetry, availed VRS	31/07/2019
9.	Shri Chuku Tamar	Driver	05/09/2019	Late G .C. Gupta	21.12.2018

4. Whether recruitment/appointment have been done with due process of recruitment rules?

If not, how and in what manner recruitment have been done?

- **Recruitment done as per details mentioned in "mode of appointment" column below:**

SL. NO.	Name of the Appointee	Appointed as	Mode of Appointment	Appointment Order No
1.	Shri Chuku Panior	UDC	Direct Appointment	E-8704/2013/Vol II dtd 19/11/2018
2.	Smti Likha Asum	LDC	Direct Appointment	E-8704/2013/Vol II dtd 29/04/2020
3.	Smti Padi Pubyang	LDC	Direct Appointment	E-8704/2013/Vol II dtd 29/04/2020
4.	Shri Chuku Tado	Handyman	Appointed as ALC on 14/10/2014 in DC Office	E-8100/99/Vol III dtd 05/11/2018
5.	Shri Bini Arun	Handyman	Direct Appointment	E-8100/99/Vol II dtd 07/08/2018
6.	Ms. Taya Yaja	Peon	Direct Appointment	E-8100/99/Vol III dtd 19/11/2019
7.	Ms. Toko Mama	Peon	Direct Appointment	E-8100/99/Vol III dtd 30/04/2020
8.	Shri Rintu Dey	Driver	Appointed as contingency staff on 05/04/2011 in DC Office	E-8636/2011- dtd 05/09/2019
9.	Shri Chuku Tamar	Driver	Direct Appointment	E-8636/2011- 05/09/2019 dtd 05/09/2019

From the above orders and on telephonic discussion with the present DC, Ms. Swetika Sachan, it is clear that the appointments **were done without following any procedure like Newspaper, advertisement, interview, etc and further there are no records pertaining to these appointments in the DC Office besides the appointment orders (copies enclosed)**. Even in the two cases where contingency staff were appointed to regular posts (Sr nos. 4 and 8 in the above table), there was no DPC done but persons were appointed directly without following any seniority or procedure.

The undersigned has not visited the District personally or called any of the staff of DC Office to Itanagar due to Covid restrictions and pre-occupation of undersigned in matters of Assembly, Budget, etc but if directed, the undersigned will do detailed report by recording statements, etc if time of 2 Or 3 months is granted.

(Swapnil M. Naik, IAS)
Secretary (Textiles, Handicrafts and Civil Aviation)
Itanagar

To,
Smt Sadhana Deori
Secretary DA,
Govt. of Arunachal Pradesh,
Itanagar

18. On perusal of the Enquiry Report, it is noticed that while answering each of the terms of reference made to the Enquiry Officer, as above, the Enquiry Officer in the report has found that appointments were made without following any procedure like newspaper advertisement, interview, etc. and further there are no records pertaining to their appointments in the office of the Deputy Commissioner. The, finding recorded by the appointed Enquiry Officer have not been disputed by the petitioners.

19. In the premises of the aforesaid undisputed facts, that the appointment of the petitioners were made without following any procedure like newspaper advertisement, interview, etc. and further there are no records pertaining to their appointments in the office of the Deputy Commissioner, what calls for determination in the instant case is whether the petitioners who have been terminated from the service without issuing show-cause notices to the petitioners requires interference by this Court in exercise of power under Article 226 of the Constitution of India declaring the termination void or whether the Court can refuse to grant relief on the ground that the facts of the case do not justify exercise of discretion to interfere because such interference will result in restoration of an earlier illegal appointment order of the petitioners?

20. In the decisions relied on by Mr. Chanda, learned counsel for the

petitioner, namely, **1991 (1) Supplement SSC 330** and **WP(C)243/2022** and **WP(C)361/2021**, it is noticed that termination order or cancellation order of the petitioners' appointment without providing an opportunity of hearing was set aside by the Court. Though, ordinarily, any order passed in violation of the principle of natural justice, would be liable to be interfered with by this Court but the said principle is held to be not an absolute proposition as can be gathered from the decision rendered by the Hon'ble Supreme Court in the case of **M.C. Mehta (supra)**.

21. Paragraph Nos. 16, 17, 18, 19, 20, 21, 22 & 23 of **M.C. Mehta vs. Union of India and Ors.**, reported in **(1999) 6 SCC 237**, may be noticed at this stage, which are reproduced herein below:

16. Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the court's discretion to refuse relief even though the rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

17. We shall initially refer to two cases where discretion was exercised not to grant relief and the first one was a case where relief was refused even though there was breach of natural justice. The first one is Gadde Venkateswara Rao v. Govt. of A.P. There the Panchayat Samithi, in exercise of its statutory powers passed a resolution on 25.8.1960 to locate a primary health centre at Dharmajigudem. Later, it passed another resolution on 29.5.1961 to locate it at Lingapalem. On a representation by villagers of Dharmajigudem, Government passed orders on 7.3.1962 setting aside the second resolution, dated 29.5.1961 and thereby restoring the earlier resolution, dated 25.8.1960. The result was that the health centre would continue at Dharmajigudem. Before passing the orders, dated 7.3.1962, no notice was given to the Panchayat Samithi. This Court traced the said order of the Government, dated 7.3.1962 to section 62 of the Act and if that were so, notice to the Samithi under section 62(1) was mandatory. Later, upon a review petition being filed, Government passed another order on 18.4.1963 cancelling its order, dated 7.3.1962 and accepting the shifting of the primary centre to Lingapalem. This was passed without notice to the villagers of Dharmajigudem. This order of the Government was challenged unsuccessfully by the villagers of Dharmajigudem in the High Court. On appeal by the said villagers

to this court, it was held that the latter order of the Government, dated 18.4.1963 suffered from two defects, it was issued by Government without prior show cause notice to the villagers of Dharmajigudem and the Government had no power of review in respect of Government orders passed under section 62(1). But that there were other facts which disentitled the quashing of the order, dated 18.4.1963 even though it was passed in breach of principles of the natural justice. This court noticed that the setting aside of the later order, dated 18.4.1963 would restore the earlier order of the Government, dated 7.3.1962 which was also passed without notice to the affected party, namely, the Panchayat Samithi. It would also result in the setting aside of a valid resolution, dated 29.5.1961 passed by the Panchayat Samithi. This court refused relief and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba Rao, j., as he then was, observed (page 189) as follows :

"Both the orders of the Government, namely, the order, dated 7.03.1962, and that of, dated 18.04.1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under section 72 of the Act to review an order made under section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village." (Emphasis supplied)

His Lordship concluded as follows :

" In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government, dated 18.04.1963? If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

The above case is a clear authority for the proposition that it is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order, if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.

18. We would next refer to another case, where, though there was no breach of the principles of natural justice, this court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In Mohammad Swalleh and others v. IIIrd ADJ, which arose under the U.P.

Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of section 43(2)(rr) of the Act. The District Court entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this court accepted that though no appeal lay to the District Court, the refusal by the High Court to set aside the order of the District Judge was correct as that would have restored the order of the prescribed authority, which was illegal.

19. Learned senior counsel for Bharat Petroleum contended that once natural justice was violated, the court was bound to strike down the orders and there was no discretion to refuse relief and no other prejudice need be proved.

20. It is true that in Ridge v. Baldwin, it has been held that breach of the principles of natural justice is in itself sufficient to grant relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this court in several cases, but we might point out that this court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J., in S. L. Kapoor v. Jagmohan. After stating (SCC p. 395, para 24) that 'principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed' and that 'non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary', Chinnappa Reddy, J., also laid down an important qualification as follows : (SCC p. 395, para 24)

"As we said earlier, 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 is not necessary to observe natural justice, but because courts do not issue futile writs."

21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of the principles of natural justice.

22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases, there is a considerable case law and literature as to whether relief can be refused even if the

court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See *Malloch v. Aberdeen Corporation* (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*, *Cinnamond v. British Airport Authority* and other cases where such a view has been held. The latest addition to this view is *R v. Ealing Magistrates' Court ex p Fannaran* (Admn LR at p. 358) (see De Smith, Suppl., page 89) (1998) where Straughton, L. J, held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd v. McMohan* [1987] (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand court in *McCarthy v. Grant*, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood - not certainty - of prejudice'. On the other hand, Garner's *Administrative Law*, 8th Edition, 1996, pages 271-272, says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin*, Megarry, J., in *John v. Rees*, stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J., has said that the 'useless formality theory' is a dangerous one and, however, inconvenient, natural justice must be followed. His Lordship observed that convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality' theory in *R v. Chief Constable of the Thames Valley Police Force ex p Cotton*, by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary?' 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much (of) earlier in 'Natural justice, Substance or Shadow' by Prof. D. H. Clark of Canada (see 1975 PL, pages 27-63) contending that *Malloch* and *Glynn* were wrongly decided. Foulkes (*Administrative Law*, 8th Edition, 1996, pages 323), Craig *Administrative Law*, 3rd Edition, page 596, and others say that the court cannot prejudge what is to be decided by the decision making authority. De Smith, 5th Edition, 1994, paras 10.031 to 10.036, says courts have not yet committed themselves to any one view though discretion is always with the court. Wade *Administrative Law*, 5th Edition, 1994, pages 526-530, says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or

beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S. K. Sharma, Rajendra Singh v. State of M. P., that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.

22. From perusal of the aforesaid paragraphs in the case of **M.C. Mehta (supra)** referred to hereinabove, it is noticed that though the breach of principle of natural justice is in itself sufficient to grant relief but 2 (two) exceptions have been culled out from the said principle, which is to the following effect:

(i). It is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court under Article 226 can refuse to exercise its discretion of striking down the order, if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.

(ii). That if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of principles of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.

23. In other words, though the order impugned may have been passed in breach of the principle of natural justice the discretion has been conferred on the Court under Article 226 of the Constitution of India to refuse to exercise its discretion of striking down the order, if such striking down will result in restoration of another illegal order passed earlier in favour of the petitioners.

24. Applying the first exception culled out by the Hon'ble Supreme Court in the case of ***M. C. Mehta (supra)***, in the instant case, it has not been disputed by the petitioners themselves that they were appointed by the Deputy Commissioner, Lower Subansiri District, Ziro, without following due process of advertising the post and conducting a selection. Thus, petitioners were appointed, in violation of the Article 14 & 16 of the Constitution of India, thereby, depriving the other eligible candidates to participate in the selection process, had such selection process been undertaken by the Deputy Commissioner after the post was put to an advertisement and selection held pursuant thereto.

25. In the aforesaid admitted position of the fact, namely, the petitioners' appointments were in fact, an illegal appointment, in the event, the impugned termination order of the petitioners from services are struck down by this Court for violation of the principles of natural justice of the petitioners, such, striking down of the impugned termination order of the petitioners will result in restoration of the illegal appointment order issued to the petitioners earlier. In such a situation, it has been held by the Hon'ble Supreme Court in the case of ***M. C. Mehta (supra)*** that refusal to exercise the discretionary power of the Court under Article 226 of the Constitution of India would be permissible and justified even if the order impugned was

issued in violation of the principle of natural justice.

26. Applying the second exception, culled out by the Hon'ble Supreme court in the case of ***M. C. Mehta (supra)***, it is again an admitted and indisputable factual position that the petitioners were illegally appointed by the Deputy Commissioner, Lower Subansiri District, Ziro, without following the constitutional scheme of appointment to a public post. If it is the admitted and indisputable factual position, the one and the only conclusion possible and permissible in the facts and circumstances of the case is that the appointments of the petitioners cannot be sustained in law. If that is the only conclusion possible and permissible, which it is in the present case, it has been held in the case of ***M. C. Mehta (supra)*** that Court need not issue a writ merely because there is violation of the natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.

27. Thus, on consideration of the matter in its entirety, it has been found that if the impugned order of termination of the service of the petitioners are interfered with by this Court on the ground that the principle of natural justice have not been followed, it will result in restoration of illegal order of appointment issued to the petitioners by the Deputy Commissioner, Lower Subansiri District, Ziro. It is also found that the admitted or indisputable factual position in the instant case is that appointments of the petitioners had been made in violation of Article 14 & 16 of the Constitution of India and therefore, the only conclusion possible and permissible is that the appointments of the petitioners cannot be sustained in law under any circumstances for which, this Court in exercise of power under Article 226 of

the Constitution of India should not issue a writ to compel the observance of natural justice, the result of which would be the same even after observance of the principles of natural justice. It is because the Courts do not issue futile writs.

28. For the reasons and discussions made hereinabove, though the impugned termination of services of the petitioners may have been made in violation of the principle of natural justice, I am not inclined to exercise the discretionary power under Article 226 of the Constitution of India to strike down the impugned termination of service of the petitioners for the reasons that if the impugned order of termination is interfered with by this Court, the same will result in restoration of yet another illegal order of appointment issued earlier to the petitioners by the Deputy Commissioner, Lower Subansiri District, Ziro; and, that the admitted or indisputable facts in the instant case is that the appointments of the petitioners made in violation of the Article 14 and 16 of the Constitution of India, cannot be sustained in law under any circumstances.

29. Resultantly, the writ petitions fail and are accordingly, dismissed.

30. Before parting with the record, since the petitioners in their affidavit-in-reply have mentioned names of other similar illegal appointments made, whose service have not been terminated, it is hereby observed that it shall be open for the petitioners to challenge the illegal appointments made, whose names have been mentioned in their affidavit-in-reply and who have been allowed to continue in their services.

JUDGE

Comparing Assistant