

Court No. - 17

Case :- WRIT - A No. - 6398 of 2003

Petitioner :- Vinod Kumar Awasthi

Respondent :- State Of U.P. Thorough Prin. Secy. Medical Health And Family

Counsel for Petitioner :- Vikas Singh, Santosh Kr. Yadav Warsi, Somesh Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 10.09.2003 whereby order granting promotion to petitioner to a Class-III has been cancelled on the ground that it is not in accordance with the service rules.

3. Learned counsel for petitioner submits that initially petitioner was appointed on the post of Peon on 30.03.1984 whereafter he was given charge of the post of Lower Division Clerk on 21.05.1998 without any extra financial benefits. Subsequently he was again granted ad hoc promotion on 02.11.2000 again with a stipulation that no extra payment would be made to petitioner. Thereafter the ministerial Group-C posts, outside the purview of Public Service Commission, Group-D employees rules were notified on 22.12.2001 and applications inviting appointment by promotion on a Class-III post were issued on 21.03.2003 whereafter petitioner alongwith another incumbent appeared in the written/typing test on 03.04.2003 and on being found successful, was promoted vide order dated 10.04.2003 whereafter the impugned order has been passed cancelling petitioner's promotion on the ground that his selection was not in accordance with the reservation rules applicable.

4. It has been submitted that a specific ground has been taken that the Rules of 2001 indicating such reservation would be inapplicable to the vacancies created prior to 22.12.2001. It has also been submitted that impugned order has been passed without affording any opportunity of hearing to petitioner although he had acquired a vested right in lieu of the promotional order. Learned counsel has also placed reliance on judgment in the Case of **Y.V. Rangaiah versus J. Sreenivasa Rao** reported in **(1983) 3 SCC 284** to submit that vacancy is to

be filled only as per the rules which exist on the date of such vacancy. It is also submitted that since petitioner has been promoted in terms of the Government Order dated 31.08.1982, there was no illegality in his promotion.

5. Mr. Shatrudhan Chaudhary, learned State Counsel has refuted submissions advanced by learned counsel for petitioner with the submission that once petitioner applied for appointment by promotion in terms of the office order dated 21.03.2003, which in turn was issued in pursuance of the Rules of 2001 and subsequently upon selection joined the post, he would be barred by principles of estoppel from challenging the impugned order on the ground that vacancy was to be seen only as per the rules prevalent on that date. He has also submitted that prior to petitioner's promotion on 10.04.2003, no substantive promotional order had ever been issued in favour of petitioner. It is also submitted that since the promotional order was in variance with the rules of reservation, the same was rightly cancelled and no opportunity of hearing is required to be granted in such circumstances.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that one of the basis for challenging the order is that the rules as on the date of vacancy were required to be made applicable to petitioner and not as on the date when selection was made. Learned counsel has placed reliance on the judgment of **Y.V. Rangaiah** (supra).

7. However, it is a relevant fact that the aforesaid judgment of **Y.V. Rangaiah** (supra) has been specifically overruled by Hon'ble Supreme Court in the case of **State of Himachal Pradesh and others versus Raj Kumar and others (2023) 3 SCC 773** and therefore the aforesaid challenge fails.

8. The second submission of learned counsel for petitioner is that even if the opposite parties were of the opinion that petitioner's promotion was not in accordance with the relevant Rules of 2001 and was made without following the provisions of the reservation, he was required to be afforded an opportunity of hearing in view of his vested right upon promotion.

9. With regard to aforesaid proposition, learned counsel has placed reliance on judgment rendered in the case of **Dharampal Satyapal Limited versus Deputy Commissioner of Central Excise, Gauhati and others; (2015) 8 SCC 519** particularly with regard to applicability of principles of natural justice even in administrative matters. Relevant portion of the

judgment is as follows:-

"21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo debet esse judex in propria sua causa; and (ii) opportunity of being heard to the party concerned i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order."

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong."

10. In the case of **Prakash Ratan Sinha versus State of Bihar and others; (2009) 14 SCC 690**, the action of cancellation of promotion having civil consequences thereby applying principles of natural justice has been considered in the following terms:-

"11. The decision complained against in the instant case is an administrative decision. The decision is likely to have far reaching civil consequences for the appellant, as it has adversely affected his right to continue in the promotional post. Therefore, in our view, the decision concerning the promotion makes itself available for scrutiny by the courts on the touchstone of well-established principles of natural justice. The decision that was questioned before the Court was an administrative decision having civil consequences and is alleged to have been taken without affording an opportunity of hearing to the appellant."

12. The argument of the learned counsel for the appellant, basically is that, the administrative decision taken by the respondents is unfair, unreasonable and in breach of the principles of natural justice. The administrative decision taken by the respondents is within the realm of public law and therefore, the decision ought to have been taken in a fair and reasonable manner. This was more necessary because the action cancelling the promotion of the appellant had civil consequences in the sense that it not only puts an end to the right of the appellant and also his

further career prospects. Therefore, the respondents are under an obligation to take all decisions in a fair and lawful manner by adhering to the rules of natural justice.

13. The law in this regard has been settled by several decisions of this Court. The principle that emerges from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made."

11. The aforesaid aspect has also been considered by Division Bench of Himachal Pradesh High Court in the case of **Shri Dina Nath Sharma versus Director of Public relations; 1976 SCC OnLine HP 11** in the following terms:-

"9. The first point on the merits which deserves consideration is whether the petitioners in these three writ petitions should have been afforded an opportunity of being heard before the impugned orders reverting them were passed. The petitioners were appointed to the posts of Drama Inspector and Assistant Radio Engineers respectively, and it was after they had held those posts for a period of time that for the first time the posts were treated as reserved for scheduled caste and scheduled tribe candidates. Now, no doubt the petitioners held those posts on probation. As holders of posts on probation, it is said, they have no right to hold the posts. That proposition rests on the basis that the contract of employment and the Rules governing them stipulate that they can be removed from the post on their services being terminated in accordance with contract and Rules. Ordinarily such a contract or the Rules envisage the termination of services on the Government servant being found unsuitable and unfit for the post. A period of probation is a period during which the Government servant is on trial, it is only if the Government servant is found fit and suitable to be confirmed on completing his probation that he is confirmed. This is a matter falling within the terms of the contract and the provisions of the Rules. It is in this sense that the statement is generally made that a Government servant on probation has no right to hold the post. So long as the action is taken within the terms of the contract and the provisions of the Rules, on question arises of any breach of Article 311(2) of the Constitution. And the Government servant has no right to be heard in the matter. But it seems to me that the proposition cannot be extended to those cases where the services of the Government servant are terminated for reasons outside the terms of the contract and the provisions of the Rules. So long as the post continues, the Government servant is entitled to continue in that post subject to the terms of his contract and the provisions of the Rules. He cannot be divested of the post except for reasons within his contract and the Rules. The contract of service and the Rules envisage that if the Government servant is found fit and suitable within the contemplation of the terms of his contract and the Rules he would ordinarily be confirmed. If for reasons outside the contract and the Rules the Government servant is divested of the post, the contract and the Rules which confer certain rights on him are violated. In that event, he is entitled to an opportunity of being heard against the termination of his appointment to the post, there is no doubt that the question whether posts should be reserved for scheduled caste and scheduled tribe candidates is a matter falling within the domain of Government policy, and it is not open to a Government servant to be consulted in the matter merely because but

for that reservation he might have been appointed to such post. But once his appointment to such post takes place, a contract comes into existence and his appointment and tenure in that post is governed by the terms of his contract and the relevant rules applicable to the post. The rights and obligation flowing from such contract and the rules, including the right to be considered for confirmation, come into action, and if the Government servant is reverted from that post for reasons falling outside the envelope of those rights and obligations the principles of natural justice require that he should be heard in the matter. That is the position so long as the post continues in existence. It is a different matter if the post is abolished for bona fide reasons."

12. Upon applicability of aforesaid judgments in the present facts and circumstances, it is quite evident from a perusal of the order dated 10.09.2003 that no notice or any opportunity of hearing has been provided to petitioner prior to passing of the impugned order cancelling his promotion. It is relevant that the impugned order has been passed after almost five months of petitioner's working on the promotional post.

13. It is also relevant as has been admitted by learned counsel for parties that the impugned order had been stayed by means of interim order dated 01.10.2003 whereafter petitioner continued on the promotional post as has thereafter been accorded subsequent promotions also till Level-6 and has superannuated on 31.03.2024 on the said promotional post with service benefits accorded to him being subject to final decision of the present petition.

14. In view of aforesaid judgments as indicated hereinabove, it is evident that principles of natural justice are required to be followed in case a person is visited with adverse civil consequences as in the present case even if the promotion is alleged and prima facie found to be against the service rules.

15. Considering aforesaid facts and law adverted to hereinabove, the impugned order dated 10.09.2003 being found not in consonance with the law is therefore quashed by issuance of a writ in the nature certiorari. Consequences to follow.

16. The writ petition, therefore, stands **allowed**. Parties to bear their own cost.

Order Date :- 18.4.2024

Satish