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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8159 OF 2012

Vilas Sidram Ardhapure,
Age : 50 years, Occ : Service
as Registrar, M.S.Bidve
Engineering College,
R/o Shradha Saburi,
Somwanshi Nagar,
Opp.MIT Engineering College,
Latur, Taluka and District Latur.

...PETITIONER

-VERSUS-

- 1 Mahatma Basweshwar Shikshan Sanstha,
Latur.
Through it's President
C/o Deshi Kendra Vidyalaya,
Signal Camp, Latur,
Taluka and District Latur.
- 2 M.S.Bidve College of Engineering,
Barshi Road, Latur,
Taluka and District Latur.
- 3 The Registrar,
Swami Ramanand Tirtha Marathwada
University, Nanded,
Taluka and District Nanded.

...RESPONDENTS

...

Advocate for Petitioner : Shri A.V.Patil Indrale h/f Shri V.B.Narke.
Advocate for Respondent Nos.1 and 2 : Shri S V Natu.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 07th October, 2015**

Oral Judgment:

1 The learned Advocates for the respective sides submit on instructions that they have no objection if this Court hears this matter.

2 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3 The Petitioner is aggrieved by the judgment and order dated 28.10.2010 delivered by the College and University Tribunal (for short “CUT”) in Appeal No.SRTMU-06/2010.

4 Respondent No.3/ University is a non contesting formal party, which has chosen not to cause an appearance despite court service.

5 The submissions of Shri Patil, learned Advocate for the Petitioner/ Employee can be summarized as follows:-

- (a) The Petitioner was appointed as a Clerk/ Accountant by Respondent No.1/ Management in 1987.
- (b) The post of Registrar in Respondent No.2/ Engineering College conducted by Respondent No.1 was vacant.
- (c) By an order of promotion dated 31.10.2006, the Petitioner was promoted as a Registrar w.e.f. 01.11.2006 and was transferred to Respondent No.2/ Engineering College.

- (d) The elections to Respondent No.1/ Trust were held in March, 2010.
- (e) Two groups claimed to have been elected as office bearers.
- (f) Therefore, two change reports were submitted.
- (g) Even in 2006, two groups had claimed to be elected and two change reports were filed.
- (h) By the order of the Assistant Charity Commissioner dated 23.01.2009, the change report of the purported elected office bearers which appointed the Petitioner as a Registrar was rejected.
- (i) By the order dated 16.06.2010, the elected Committee, whose change report was accepted by the Assistant Charity Commissioner, Osmanabad, terminated the Petitioner from the position of Registrar and he was directed to refund the entire amount that he had earned by way of salary from 01.11.2006 till 16.06.2010.
- (j) No opportunity of hearing was given to the Petitioner prior to the termination of his service.
- (k) Since the Petitioner by letter dated 21.04.2010 demanded the unpaid salary of March, 2010, the Management reacted by terminating his services.
- (l) Even if it is presumed that the promotion was cancelled or the

Petitioner was terminated as Registrar, he would be relegated to the post of an Accountant.

- (m) Appeal No.6/2010 was preferred by the Petitioner before the CUT alleging termination of service.
- (n) The Respondent/ Management has taken a stand in the Written Statement that the promotion of the Petitioner was illegal and was at the hands of an unauthorized governing Body.
- (o) No stand was taken in the Written Statement that the Petitioner has not been terminated, but his promotion has been set aside and he is at liberty to report for duties.
- (p) The Management did not permit the Petitioner to enter the premises of the Engineering College or even the office of the Trust.
- (q) The son of the Chairperson was appointed as a lecturer by the Respondent/ Management.
- (r) While in service, he was pursuing higher studies at Bidar and he illegally drew salary as if he was on duty.
- (s) A criminal case was registered against him and the Petitioner was named as a witness in the matter.
- (t) Therefore, the Management has vindictively terminated the services of the Petitioner.

- (u) The President and the Secretary who terminated the Petitioner were party to Change Report No.688 of 2006, which was allowed by the Assistant Charity Commissioner.
- (v) In Appeal, the decision of the Assistant Charity Commissioner was set aside by the order dated 07.12.2013 and Change Report No.688/2006 stood rejected.
- (w) This Court confirmed the rejection of Change Report No.688/2006.
- (x) Presently, an incharge Registrar has been appointed.
- (y) Paragraph No.6 of the Written Statement filed by the Respondent/ Management before the CUT, indicates that an enquiry against the Petitioner was initiated, but could not be continued and completed.
- (z) It was, therefore, an admitted position that the service of the Petitioner was terminated without following the due procedure laid down in law.
- (z-1) The Petitioner would be attaining the age of retirement which is 58 years, in November, 2016.
- (z-2) The Petitioner has relied upon the judgment of the Apex Court in the case of *Basudeo Tiwary v/s Sido Kanhu University and others*, **1999 SC SLR 374**.

6 Shri Patil submits that the Petitioner was working continuously as a Registrar. He was appointed by the Management of Respondent No.1/ Trust. Therefore, he continued to be the employee of the Trust. Without an opportunity of hearing, the Petitioner could not have been terminated. He had specifically taken a plea before the CUT that he was terminated without following the due procedure laid down in law and without giving him an opportunity of hearing, much less a fair hearing.

7 He submits that since the elected body which has terminated the Petitioner's service has subsequently been unseated as its change report No.688/2006 has been rejected, the termination of the Petitioner can be said to be at the hands of an illegal Committee. On this count also, the impugned termination is bad in law. Shri Patil, therefore, prays that the Petitioner be reinstated with continuity and full back-wages.

8 Shri Natu, learned Advocate has appeared on behalf of Respondent Nos.1 and 2 and has strenuously supported the impugned judgment. His submissions can be summarized, in brief, as follows:-

- (a) The Petitioner was appointed as an Accountant by the Trust and he was working in the office of the Trust throughout.
- (b) After 2006 elections, the two factions amongst the Trustees claimed to have been elected.

- (c) The change report No.688/2006 of the Trust, which terminated the Petitioner, was initially accepted and hence, they were empowered to run the Trust.
- (d) The change report No.688/2006 of Respondent No.1/ Trust was rejected by the Appellate Authority and by this Court.
- (e) No employee of the Trust can be directly promoted as the Registrar of the Trust or the College.
- (f) The Petitioner was appointed as an Accountant in the office of the Trust and not the Engineering College.
- (g) Both the entities are distinct and different.
- (h) There were two committees claiming to be the official committee of the Trust as on 31.10.2006.
- (i) The group in favour of the Petitioner directly promoted him as a Registrar.
- (j) Eventually, the change report of both the factions was rejected.
- (k) In 2014, again the two groups claimed to have been elected as office bearers of the Trust.
- (l) The Trust cannot promote any person by picking and choosing him.
- (m) The regular procedure for promoting any person to the post of a Registrar, was not complied with.

- (n) An Accountant cannot be appointed/ promoted as a Registrar without following the due procedure of law.
- (o) No formal hearing is required to be held before cancelling the promotion of the Petitioner as the promotion itself was illegal.
- (p) Reliance is placed upon the following judgments by the Respondent/ Management :-
 - (i) AIR 1996 SC 2219, State of Madhya Pradesh v/s Shyama Pardhi.
 - (ii) 2008 (1) SCC 798, Nagendra Chandra v/s State of Jharkhand.
 - (iii) 2007 (4) SCC 54, Ashok Kumar Sonkar v/s Union of India.

9 Shri Natu further submits that the Petitioner has also approached the Industrial Court by filing Complaint (ULP) No.317/2004 (old No.50/2003). By the judgment and order dated 01.08.2005, the complaint was allowed and unpaid wages prior to 2006 were directed to be paid by the Industrial Court.

10 Shri Natu, therefore, submits that an illegal appointment would not create any rights in the Petitioner. Once it is established that the appointment was illegal, no different conclusion is likely to be arrived at

even if the Petitioner was to be heard. He could not establish before the CUT that his appointment was legal and proper. Hence, this petition be dismissed.

11 In rebuttal, Shri Patil submits that the Petitioner's initial appointment as a Clerk w.e.f. 03.04.1989 was in the T.B.Girwalkar Polytechnic College, Ambejogai. By order dated 27.07.1991, he was transferred w.e.f. 01.08.1991 to the office of the Trust at Latur. His order of promotion has been issued by the office bearers of the Trust and his services were transferred to Respondent No.2/ Engineering College. His confirmation order dated 04.12.2008 as a Registrar was issued by the Administrator who was appointed by the order dated 09.07.2010 passed by the Joint Charity Commissioner. He, therefore, submits that the petition deserves to be allowed.

12 I have considered the submissions of the learned Advocates.

13 It is apparent that there are two factions amongst the trustees of this Trust. Each faction claims to be the governing body. One faction promoted the Petitioner and the other faction terminated his services.

14 Without getting into the disputed questions as regards the

dispute amongst the two factions of the members of the Trust, ends of justice would be met by considering whether, the Petitioner was promoted by following the due procedure laid down in law. Neither the Petitioner nor the Management have pointed out any promotion policy. Parameters for considering a candidate for promotion are unknown. There was no publicity given to the intention of the Management to promote one amongst their employees to be the Registrar of Respondent No.2/ College. There is no documentary evidence as to what procedure was followed. No interviews were held.

15 In the above backdrop, it can only be concluded that the Petitioner was picked and chosen by one faction of the Management and was put in the position of the Registrar.

16 The Petitioner has laid heavy stress on the aspect of a reasonable opportunity of hearing and a fair hearing being given to him. Paragraphs 11 and 13 of the Basudeo Tiwary judgment (supra) have been indicated. However, if no different conclusion could be arrived at after hearing the Petitioner, in my view, no prejudice can be said to have been caused to the Petitioner in not being given a notice of hearing.

17 Even in this Court, the Petitioner was unable to point out any

promotion policy, parameters for promotion, fact of any interviews held and as to whether, anybody else along with him was considered for promotion. When this happens to be the undisputed position, no purpose would be served now by directing the Management to issue a formal notice of hearing to the Petitioner.

18 The Respondent/ Management has relied upon the judgment of the Apex Court in the case of Nagendra Chandra (supra), especially paragraphs 8 and 9 to submit that an appointment made in infraction of the recruitment rules is violative of Articles 14 and 16 of the Constitution of India.

19 The Management has relied upon the judgment of the Apex Court in the case of Ashok Kumar Sonkar (supra), to support their contention that if by the notice of hearing, the ultimate order that is likely to be passed may not be altered, he may not be given an oral hearing. Paragraphs 24 to 31 of Ashok Kumar Sonkar judgment read as under:-

“24. *This bring us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillar of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be*

complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

25. *It is also, however, well-settled that it cannot be put any straight jacket formula. It may not be in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise.*
26. *A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.*
27. *In Aligarh Muslim University and Others v. Mansoor Ali Khan [(2000) 7 SCC 529], the law is stated in the following terms:-*
 25. *The useless formality theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one conclusion referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some*

others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

28. *In Karnataka State Road Transport Corporation and Another v. S.G. Kotturappa and Another [(2005) 3 SCC 409], this Court held :-*

"The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given"

29. *In Punjab National Bank and Others v. Manjeet Singh and Another [(2006) 8 SCC 647], this Court opined :-*

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

30. *In P.D. Agrawal v. State Bank of India and Others [(2006) 8 SCC 776], this Court observed :-*

"The Principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

It was further observed :

"Decision of this Court in S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379], whereupon Mr.Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364] and Rajendra Singh vs. State of M.P [(1996) 5 SCC 460], the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula. [See Viveka Nand Sethi vs. Chairman, J. & K. Bank Ltd. & Ots. (2005) 5 SCC 337 and State of U.P vs. Neeraj Awasthi & Ors. JT 2006 (1) SC 19. See also Mohd. Sartaj vs. State of U.P (2006) 1 SCALE 265.]"

31. *The principles of equity in a case of this nature, in our opinion, will have no role to play. Sympathy, as is well-known, should not be misplaced."*

20 In the light of the above, I do not find that the grave injustice and an irreparable harm has been caused to the Petitioner in not being heard before his order of promotion was set aside.

21 It is not in dispute that the Petitioner was selected by following the due procedure laid down in law as an Accountant by the Respondent/ Management. It is also not in dispute that the promotion of the Petitioner dated 31.10.2006 has been cancelled. It is also not in dispute that by the cancellation of his promotion, he is relegated to his permanent post of an Accountant.

22 The Petitioner had alleged termination at the hands of the Respondent/ Management in his appeal before the CUT. Though the Management has filed a lengthy Written Statement running into 12 pages, nowhere has the Management taken a stand that the Petitioner has not been terminated and it is only that his promotion has been cancelled. Consequentially, without in fact there being any termination of the Petitioner from the post of Accountant, he has been kept out of employment as if he has been terminated from the post of Accountant. I do not see any fault on his part.

23 Shri Natu has canvassed on behalf of the Management that

the Petitioner should have reported for work and because he has failed to report for duties, the principle of “no work-no wages” would apply to him. In my view, this contention of the Management could have been entertained provided it was stated in their Written Statement that the Petitioner has not been terminated and he is at liberty to report for duties on the post of Accountant. As observed above, in the entire Written Statement the Management has not taken this stand. In fact, the Management in their endeavour to justify the cancellation of the promotion given to the Petitioner, either has lost sight of this aspect or has found it convenient to keep the Petitioner away from work.

24 The Apex Court, in recently delivered two judgments [*Gauri Shanker v/s State of Rajasthan*, 2015 (2) CLR 497 decided on 16.04.2015 and *Nicholas Piramal India Limited v/s Hari Singh*, 2015 (2) CLR 468 decided on 30.04.2015], has concluded that the back-wages to some extent can be granted to an employee if he has suffered hardships due to unemployment.

25 The Apex Court, in the matter of Gauri Shanker v/s State of Rajasthan (supra), has concluded that the employee deserves to be granted 25% of the back-wages. In the matter of Nicholas Piramal India Limited v/s Hari Singh (supra), the Apex Court concluded that the grant

of 50% back-wages was justified looking at the hardships caused to the employee.

26 Considering the fact situation in this case, I am convinced that the Petitioner deserves to be granted 50% back-wages along with continuity in service from 16.06.2010 till the date of his reporting for duties.

27 Since I have concluded that the cancellation of the promotion order would not amount to the termination of the Petitioner from the post of Accountant, the Management shall permit the Petitioner to report for duties as an Accountant in the office of the Management within a period of TWO WEEKS from today and shall pay 50% back-wages to the Petitioner within a period of TWELVE WEEKS from today. If either of the said directions are not complied with, the back-wages shall carry interest @ 6% per annum from the date of the judgment of the CUT.

28 In the light of the above, the Writ Petition is partly allowed. The impugned judgment and order of the CUT dated 28.10.2010 is quashed and set aside. Rule is, therefore, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)