

CWP-16306-2014
Date of decision: 19.09.2017

Jyoti

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present : Mr. M.S. Chahal. Advocate
for the petitioner.

Ms. Shruti Jain Goyal, A.A.G., Haryana.

Mr. S.N. Yadav, Advocate
for respondent No.5.

G.S. SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of the order dated 01.04.2014 (Annexure P-3) whereby the selection/appointment order of Anganwari Worker of the petitioner has been cancelled/set-aside by respondent No.3 which was alleged to be against the service jurisprudence and principle's of natural justice. The guidelines/instructions issued by respondent No.2 dated 12.06.2008 (Annexure P-1) as to how the marks are to be awarded to the candidates who were applicants for the post of Anganwari Workers, was also alleged to be violated.

It is not disputed that the order has been passed at the back of the petitioner without even issuing notice to her by the Additional Deputy Commissioner-cum-Chairman of the Selection Committee.

Counsel for the respondent-State has tried to justify the said order on the ground that the same was passed in compliance to the order of this Court passed in *Civil Writ Petition No.2813 of 2014* decided on 17.02.2014 (Annexure R-II) whereby respondent No.5-Kavita had approached this Court and it was in pursuant to the said order the rectification had been done.

Counsel for the petitioner on the other hand has submitted that though directions might have been issued by this Court on 17.02.2014 but that did not give the State the handle to pass an order at the back of the petitioner in violation of the principle's of natural justice. It is further submitted that it was respondent No.5 herself who filled her form whereby she had shown her marks as 50.50% on the basis of which the petitioner was placed at a higher merit and appointed. It is further not disputed that though the present petitioner was a respondent in the said case but notice was not issued while issuing directions to consider the representation of respondent No.5 in the said case and, therefore, she has been prejudiced twice and thus cannot be faulted as such.

On account of applications being called for the post of Anganwari Workers in April, 2013 from Ward No.8 for a single post, respondent No.5, applied for the said post and she herself had filled her application form as per matriculation percentage as 50.50% whereas it should have been 60.6%. On account of a legal notice being filed

and thereafter approaching this Court, direction was issued to look into her grievance. It is further not disputed that the appointment order dated 19.12.2013 had already been issued in favour of the present petitioner and the same has now been cancelled and a fresh selection appointment has been ordered in favour of the private respondent on the basis that Selection Committee had inadvertently calculated the percentage of marks in Matric as 50.50% and that the factual position regarding her claim was thereafter clarified.

Counsel for the petitioner has brought to the notice of this Court the application form which was filled up by the petitioner herself wherein she had mentioned in the form her marks as 50.50% in Matric Examination.

In such circumstances where the petitioner herself has filled up her form wrongly, and the impugned order itself which has been passed at the back of the petitioner, is liable to be set aside on the ground that it is violative of the principle of natural justice. Reference can be made to the judgment of the Apex Court in '***Canara Bank and others Vs. Shri Debasis Das and others 2003(4) Supreme Court Cases 557***' wherein it was held that principles of natural justice have been recognized which is commonly known as "*audi alteram partem*" rule and notice is the first limb of the principle. The second limb is giving hearing to the other side and this principle applies to judicial, quasi-judicial and administrative authorities to avoid injustice. Relevant

para reads as under:-

“21. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequence' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

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23. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in cause sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge

and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated”.

It is pertinent to mention here that it was a specific case of the petitioner in her pleadings that respondent No.5 had mentioned the percentage of her marks in Matric examination as 50.50% and, therefore, her merit had been accordingly calculated.

The private respondents have not filed any reply to this aspect also and this fact is now vouched by the photocopy of the application form which has been placed on record by the counsel for the petitioner. Once the appointment order dated 19.12.2013 had been issued in favour of the petitioner, a vested right had accrued to her and on the fault of the private respondent itself, it would not lie in the mouth

of the private respondent now to justify that the selection which had been made was wrong and specially that at the back of the petitioner. The petitioner could not be faulted on any account and she has never misled or concealed any fact and has been duly appointed on the basis of her merit at that point of time and therefore in these circumstances the order as such cannot sustain and is accordingly quashed.

Petition stands allowed.

(G.S. SANDHAWALIA)
JUDGE

September 19, 2017

ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No