

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24452 of 2013

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1. Shailendra Kumar Son Of Sipahi Paswan Resident Of Village- Mai, Post Office- Mai, Police Station- Hilsa, District- Nalanda
 2. Anand Bhushan Son Of Sri Jagdish Sharma Resident Of Village- Chhilka Par, Sohsarai, Post Office- Sohsarai, Police Station- Sohsarai, District- Nalanda
 3. Chandra Bhushan Son Of Ishwari Paswan Resident Of Village- Heganpura, Post Office- Sohsarai, Police Station- Sohsarai, District- Nalanda
 4. Nandu Rabidas Son Of Late Ram Briksh Ravidas Resident Of Village- Baburbanna, Post Office- Sohsarai, Police Station- Sohsarai, District- Nalanda
 5. Rajendra Prasad Son Of Sri Mohan Prasad Resident Of Village, Post Office And Police Station- Bind, District- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The Director, Primary Education, Primary Education Directorate, Department of Education, Govt. of Bihar, Patna
3. The District Programme Officer, (Estb.), Nalanda at Bihar Sharif
4. The District Education Officer, Nalanda at Bihar Sharif
5. The Block Education Officer, Karai Prasurai Block, Hilsa, District- Nalanda
6. The Block Education Officer, Bihar Sharif Block, District- Nalanda at Bihar Sharif
7. The Block Education Officer, Ekangar Sarai Block, District- Nalanda at Bihar Sharif
8. The Block Education Officer, Karai Prasurai Block, Hilsa, District- Nalanda
9. The Block Education Officer, Bihar Sharif Block, District- Nalanda
10. The Block Education Officer, Rahui Block, District- Nalanda
11. The Secretary, Bihar Staff Selection Commission, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar, Advocate
For the Respondent/s : Mr. Raghwanand, GA-11
Mr. Ranjan, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 02-07-2018

Heard learned counsel for the petitioners and the respondents.

The question of verification of training certificate is always open to the employer. The Division Bench of this Court in



L.P.A. No. 1712 of 2012 approved the decision of termination on account of invalidity of certification in verification. In the instant case, when the respondents after verification held out that the certificate of the petitioner is inappropriate and thereafter terminated the petitioner, the Court does not find any justification to interfere with the order. The submission of the petitioners that the principles of natural justice has not been followed in the instant case is not attracted for the reason that it would be useless formality in view of the judgment of the Apex Court in the case of **Canara Bank Vs. V. K. Awasthi**, reported in **(2005) 6 SCC 321**. Para 17 and 18 of the aforesaid judgment is quoted herein below for ready reference:

17. What is known as “useless formality theory” has received consideration of this Court in *M.C. Mehta v. Union of India*, [1999] 6 SCC 237. It was observed as under:

"22. Before we go into the final aspect of this contention, we would like to state that case 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 Corpn.*, [1971] 2 All ER 1278, (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*, [1971] 2



All ER 89; Cinnamond v. British Airports Authority, [1980] 2 All ER 368 (CA) 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 (1996) 8 Admn. LR 351, (See de Smith, Suppl. P.89 (1998) where Staughton, L.J. held that there must be „demonstrable beyond doubt“ that the result would have been different. Lord Woolf in Lloyd v. McMahon, [1987] 1 All ER 1118, has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant, (1959 NZLR 1014) however goes halfway 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 Administrative Law (8th Edn. 1996. pp.271-72) 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, (1964) AC 40: [1963] 2 All ER 66, Megarry, J. in John v. Rees, [1969] 2 All ER 274 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 Forces, ex p. Cotton (1990 IRLR 344) by giving six reasons (see also his article 'Should



Public Law Remedies be Discretionary?" 1991 PL. p.64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL.pp.27-63) contending that Malloch (supra) and Glynn (supra) were wrongly decided. Foulkes (Administrative Law, 8th Edn. 1996, p.323), Craig (Administrative Law, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn. 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 Edn. 1994, pp.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 a 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, [1996] 3 SCC 364 and Rajendra Singh v. State of M.P., [1996] 5



SCC 460 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 the case before us, '*admitted and indisputable*' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy, J."

(emphasis in original)

18. As was observed by this Court we need not to go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellant unless failure of justice is occasioned or that it would not be in public interest to do so in particular case, this Court may refuse to grant relief to the concerned employee. (see Gadde Venkateswara Rao v. Govt. of A.P. and Ors., AIR (1966) SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India etc., AIR (1990) SC 1480."

In view of the judgment of the Division Bench in L.P.A. No. 1712 of 2012, and the judgment in the case of **Canara**



Bank (supra) this court does not find any merit in the contention of the petitioners. Accordingly, the writ petition is dismissed.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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