

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10239 of 2014

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Surendra Prasad Son of Sadhu Prasad resident of Dumduma, P.S- Daudpur
District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Human Resources, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The Regional Deputy Director of Education Saran Division, Saran.
4. The District Education Officer, Saran.
5. The District Programme Officer, Primary Education Saran.
6. The Block Education Extension Officer, Garakha, Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary, Advocate
For the Respondent/s : Mr. Amar Nath Deo, SC-26

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 10-07-2018

This writ petition was filed by the petitioner against the decision of the respondents terminating the services of the petitioner on the ground that the training certificate was obtained from unrecognized institution.

2. The issue with regard to selection of teachers in response to advertisement No. 210 of 2010 was considered by various Courts and the Division Bench of this Court has finally decided the case in LPA No. 1712 of 2012 vide judgment dated 28.11.2017. The Division Bench categorically held out that appointment of 34540 Assistant Teachers is subject to verification of the academic and Training Certificate and on verification if the certificates are found to be inappropriate and on that basis order



for termination has been passed then such decision does not warrant any interference.

3. The only issue raised in the present writ application is that the petitioner was not provided opportunity of hearing before passing the impugned order. The law in this regard is well settled principles of natural justice cannot apply as straight jacket formula, it depends upon facts and circumstances of each case. In the cases where compliance of principles of natural justice is useless, Courts have dispensed with the requirement of principles of natural justice and uphold such decision. Reference in this connection may be made to the judgment of the Apex Court in the case of **Canara Bank Vs. V.K. Awasthy: (2005) 6 SCC 321**, para 17 and 18 of which is quoted below.

“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, HL (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, 358) See de Smith, Suppl. P.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] 1 All ER 1118, CA 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, HL), 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."

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."

4. In view of the above decision of the Apex Court, this Court has no difficulty in upholding the decision of the respondents terminating the services of the petitioner without granting opportunity of hearing to the petitioner, who has obtained degree from unrecognized institution, as this position cannot be improved by the petitioner by granting any amount of hearing and as such the exercise would be a futile exercise.

5. In view of the judgment of the Division Bench in LPA No. 1712 of 2012 and the judgment of the Apex Court in



Canara Bank Vs. V.K. Awasthi (supra), this Court does not find any merit in the writ petition. It is accordingly dismissed.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
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