

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7904 of 2013

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Shri Arun Kumar S/O Sri Basudeo Pd. Yadav Resident Of Village -
Lakhanpur Tal, P.O. + P.S. - Desari, District - Vaishali At Hajipur

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
2. The Director, Primary Education, Govt. Of Bihar, Patna
3. The District Education Officer, Vaishali At Hajipur
4. The District Programme Officer (Establishment), Vaishali At Hajipur
5. The Block Education Officer, Block - Mahua, Distt - Vaishali At Hajipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh
For the Respondent/s : Mr. Anjani Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

12 20-06-2018 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner submits that the petitioner cannot be faulted in the present case as the school examination board has conducted examination of the teachers training and thereafter publish the result and as such the petitioner cannot be made to suffer for the lapses of the school examination board. However, he has not been able to make out a case that the institution in question was ever recognized and if the institution was not recognized, the degree of such unrecognized institution is of no use for the purpose of appointment and the action of the



respondents cannot be faulted in terminating the service of the petitioner on verification of the record that certificate of the petitioner was not from a recognized institution. The present decision which is under challenge suffer from no infirmity as there is absolutely no material to establish that the institution in question was recognized for imparting teachers training.

In addition thereto, Mr. Singh submits that in the instant case the petitioner was condemned unheard and therefore, the order is bad that cannot be sustained. The law in this regard is well settled that principle of natural justice is not a strait jacket formula it depends on the facts and circumstances of the each case. Reference in this regard may be made to the judgment of the Apex Court in the case of **Canara Bank Vs. V.K Awasthi reported in (2005)6 SCC 321** the Apex Court has discussed various judgments on the point and held out that natural justice is not required to follow when it is useless formality.

Paragraphs 17 & 18 of the aforesaid judgment in this regard is quoted hereinbelow:-

“17.What is known as ‘useless formality theory’ has received consideration of this Court in M.C. Mehta v. Union of India.It was observed as under: (SCC pp.245-47,paras 22-23)

“22.Before we go into the final aspect of this



contention, we would like to state that cases 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.*, (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*, *Cinnamond v. British Airports Authority* 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*, (Admn. LR at p.358) (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. McMohan*, (WLR at P.862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant*, 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*, Megarry, J. in *John v. Rees*, 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* 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](#), and [Rajendra Singh v. State of M.P.](#), 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.

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."

"18As 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 employee concerned (see [Godde Venkateswara Rao v. Govt. of A.P.](#) 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.](#)"

In the instant case, the court does not find any



justification to interfere with the order when the case of the petitioner cannot be improved by granting any amount of hearing.

In view of the law laid down by the Apex Court in the case of Canara Bank (Supra), the court does not find any merit in the submission of the learned counsel. Accordingly, the writ petition stands dismissed.

Ravi/-

(Anil Kumar Upadhyay, J)

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