

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7567 of 2013

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1. Mukesh Kumar Das S/O Late Lakhan Mochi R/O Village- Ramsir, P.O.- Singhchak, Block- Chanan, District- Lakhisarai
 2. Raja Ram Das S/O Late Pyare Das R/O Village-Nemolarganj, P.O.- Babhangama, Block- Lakhisarai, Distt.- Lakhisarai
 3. Yogendra Rajak S/O Sri Tilo Rajak R/O Village- Sahur, P.O.- Sahur, Block- Suryagarha, Distt.- Lakhisarai
 4. Sanjay Rajak S/O Sri Tilo Rajak R/O Village- Sahur, P.O.- Sahur, Block- Suryagarha, Distt.- Lakhisarai
- Petitioner/s

Versus

1. The State of Bihar
 2. The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
 3. The Director, Primary Education, Govt. Of Bihar, Patna
 4. The District Education Officer, Lakhisarai
 5. The District Programme Officer (Establishment), Lakhisarai. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Mukesh Kumar Singh, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 19-06-2018

Heard Mr. Rajendra Prasad Singh, learned senior counsel for the petitioners and the learned counsel for the respondents.

2. The issue with regard to legality and validity of the training certificate and on that basis termination of petitioners is before this Court. The petitioners were appointed as Assistant Teacher under the 2010 Special Recruitment Rules whereby 34540 Assistant Teachers were appointed under the direction of the Apex Court in Nand Kishore Ojha Vs. Anjani Kumar Singh. The matter was examined at length and then under the direction of the Apex Court One Man Committee of Hon'ble Justice S.K. Chattopadhyaya, a retired



Judge of Jharkhand High Court, was constituted and a panel was prepared and out of that panel 34540 Assistant Teachers were appointed. Subsequently, the issue with regard to verification of the certificate led to termination of many teachers, whose degree of training was not found to be appropriate.

3. Learned counsel appearing on behalf of the petitioners referring to the judgment of the Apex Court in the case of Nand Kishore Ojha (supra) submitted that the petitioners once appointed cannot be touched and verification as to validity of degree and training certificate is impermissible.

4. In view of the judgment of the Apex Court, this issue was considered by different Benches of this Court and finally controversy was settled by Division Bench in L.P.A. No. 1712 of 2012 vide judgment dated 28.12.2017 and the Division Bench noticing the judgment of the Apex Court and the other judgments rendered by learned Single Judge of this Court has approved the termination holding that the decision of the Apex Court does not disentitle the respondent authorities to examine the legality, validity and the genuineness of the certificate on which they have obtained appointment.

5. In addition thereto, Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioners submits



that in the instant case petitioners were condemned unheard and, therefore, order is bad, that cannot sustain. 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 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 wherein the Apex Court has discussed the various judgments on the point and held out that natural justice is not required to follow when it is useless formality. Para 17 and 18 of the aforesaid judgment 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*, [1999] 6 SCC 237. It was observed as under:

"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. McMohan*, [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."

6. 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 opportunity of hearing. It would be futile exercise in view of the law laid down by the Apex Court in the case of **Canara Bank** (supra). In the aforesaid backdrop of facts, the Court does not find any merit in the submission of learned senior counsel for the petitioners.

7. 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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CAV DATE	NA
Uploading Date	26.06.2018
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