

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17494 of 2013

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Shiv Pujan Paswan, Son of Late Mishri Lal Paswan, Resident of Village -
Gangapur, Police Station - Mushari Gharari, District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Joint Secretary, Education Department, Government of Bihar, Patna
4. The District Education Officer, Samastipur
5. The District Programme Officer (Establishment), Samastipur
6. The Block Education Officer, Mohanpur, District - Samastipur
7. The Head Master, Upgraded Middle School, Matiaur, Mohanpur, District -
Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Bhushan Das, Advocate

For the Respondent/s : Mr. Umesh Narayan Dubey, AC to GP-27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 02-07-2018

Heard learned counsel for the petitioner 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 petitioner 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. 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.”

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)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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