

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5047 of 2018**

Rajeev Panigrahi S/o Shri J. N. Panigrahi, Aged About 35 Years Working As Upper Division Teacher At Government Middle School Kotekama Block Baster District Baster Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary , School Education Department , Mahanadi Bhawan New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. District Education Officer, Baster District Baster Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
3. Chief Executive Officer, Baster, District Baster Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

For Petitioner	:	Shri Somkant Verma, Advocate.
For State/Respondent	:	Shri Dheeraj Wankhede, Govt. Advocate
For Zila Panchayat/Respondent:		Shri Kshitij Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12.12.2018**

1. The challenge in this writ petition is to the order dated 17.07.2018.
2. The brief facts of the case is that the petitioner was vide order dated 21.06.2017 promoted from the post of Assistant Teacher (Panchayat) to Teacher (Panchayat). The said order of promotion was issued by the Chief Executive Officer, Zila Panchayat, Jagdalpur i.e. the respondent No.3 The impugned order was also immediately acted upon and the petitioner continued to work on the said post till 17.07.2018 when the order of

promotion was cancelled and the petitioner was forced to work on the post of Assistant Teacher Panchayat. It is this order, the action on the part of the respondents challenge in this writ petition.

3. The contention of the counsel for the petitioner is that the petitioner by virtue of the promotion order dated 21.06.2017 immediately had assumed the duties and were discharging the duties for well over an year before the impugned order which was abruptly passed. It was also the contention of the petitioner is that before issuance of the impugned order, no opportunity of hearing was given whatsoever to justify the promotion which the petitioner has obtained or nor an opportunity to give a clarification in support in his defence was afforded to the petitioner before the impugned order was passed. Counsel for the petitioner further raised the contention that the authorities concerned ought to have given an opportunity to defend the promotion before a decision was taken and thereafter should have passed an order. In the absence of which the impugned order being in violation of principles of natural justice, the impugned order deserves to be set aside/quashed.

4. Though on merits also the counsel for the petitioner contends that the petitioner was eligible for promotion and had all the requisite eligibility criteria and for this reason also the action on the part of the respondents was not justified.

5. Counsel appearing for the respondents particularly the counsel for Zila Panchayat opposing the petitions submits that the impugned order dated 17.07.2018 is nothing but an order which has been passed under provisions of Section 85(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'Adhiniyam 1993'). The decision has been taken by the Chief

Executive Officer, Zila Panchayat on finding the promotion earlier granted to the petitioner to be illegal. He further contends that the question of opportunity of hearing would be given to the petitioner by the State Government when the proceedings drawn under Section 85(2) of the Adhiniyam of 1993. According to the counsel for respondent notices already have been issued to the petitioners pursuant to the matters being referred by the Zila Panchayat to the State Government. According to the petitioner show cause notice in this regard was issued by the State Government to the petitioner on 25.08.2018 and the petitioner also has responded to the said notice and an appropriate order is yet to be passed by the State Government after the show cause notice was issued. Thus, it cannot be said that the petitioner would be denied of the right of personal hearing. He further submits that subject to the petitioner providing satisfactory explanation justifying the promotion which was granted to him, the State Government may confirm the earlier promotion order dated 21.06.2018 thereby setting aside the order passed by the Chief Executive Officer, Zila Panchayat. Thus, at this stage in exercise of powers under Article 226 of the Constitution of India this Court may not entertain the present writ petition.

6. Having heard the contentions put forth on either side and on perusal of the records what is glaringly revealed from the facts of the case, is that the petitioner before this Court has been promoted by the Chief Executive Officer, Zila Panchayat, Jagdalpur vide order dated 21.06.2017. The said order of promotion was also immediately acted upon and the petitioner also assumed his duties immediately. Thereafter, the petitioner has never been given an opportunity of hearing nor was petitioner called upon by any of the respondents intimating him that his promotion order was bad-in-law for

some reason.

7. Admittedly the impugned order under challenge i.e. order dated 17.07.2018 was passed abruptly and it was also simultaneously given effect to by demoting the petitioner back to the post of Assistant Teacher from the promoted post of Assistant Teacher Panchayat. In the writ petition, there is an interim protection granted by this Court to the extent of staying the effect and operation of the order dated 17.07.2018.

8. It is by now a well settled principles of law that whenever an action of the Government or the order passed by the State Government/employer which is detrimental to the interest of the employee or has an adverse Civil consequences to least that is required or expected from the employer is an opportunity of hearing to the delinquent. Once when the contention of the respondents is that the promotion order was illegal, the fact that the petitioner has joined the said promoted posts right had been created in his favour. Before snatching away the said benefit which was granted, the minimum that was expected from the respondents was at least an opportunity of hearing and thereafter could have passed an appropriate order.

9. Coming to the provisions of law, if we look into the rule provision i.e. 85(1) of the Adhiniyam 1993, its clearly empowers the prescribed authority or the State Government for suspending the execution of any resolution or an order passed earlier. But, what is relevant to take note of the fact is that such an order can be passed when the prescribed authority or the State Government on their own form an opinion in the given circumstances, that has to be some sort of enquiry which has to be conducted by the authority. It does not appear that there was any inquiry as such conducted. Even if there

was an inquiry conducted at least the petitioner had not been taken into confidence before holding that the promotion order granted to the petitioner was illegal. The impugned order dated 17.07.2018 on this ground alone is bad-in-law.

10. Dealing with the issue of doctrine of equality and fair play and also the principles of natural justice, the Supreme Court in case of ***Prakash Ratan Sinha Vs. State of Bihar and others, (2009) 14 SCC 690***, held as under:-

“9. The respondent is an instrumentality of the State, and therefore, all its administrative decisions would be subject to the doctrine of equality and fair play, as incorporated in Articles 14 and 21 of the Constitution of India. If any of its actions or administrative decisions result in civil consequences, the principles of natural justice. This principle of law has been laid down by this Court in a catena of cases.

13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made.”

11. Similarly, in case of ***Canara Bank Vs. Debasis Das, (2003) 4 SCC 557***, the Supreme Court again dealing with action of the authorities having adverse civil consequence in paragraph 19 as under:-

“19 Even an administrative order which involves civil consequence must be consistent with the rules of natural justice.”

The Supreme Court has elaborated the expression “civil

consequence” by observing that (Debasis Das case supra) it “encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.

The Court has further stated, that “in its wide umbrella comes everything that affects a citizen in his civil life.”

12. Later on, reiterating the same principles, the Supreme Court again dealing with same issue of violation of principles of natural justice in case of ***Rajasthan State Road Transport Corporation & Anr. Vs. Bal Mukund Bairwa (2), (2009) 4 SCC 299***, observed as under:-

“35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R. Antulay (supra), this Court held:

55.”No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity.”

47. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action. {See Sawai Singh vs. State of Rajasthan and Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors}.”

13. In case of ***Radhy Shyam and Ors. Vs. State of Uttar Pradesh and Others, (2011) 5 SCC 553***, discussing the rule of hearing, the Supreme Court in paragraph 40 referring to English judgments held as under:

“40. Before advertng to the precedents in which Section

5A has been interpreted by this Court, it will be useful to notice development of the law relating to the rule of hearing. In the celebrated case of *Cooper v. Wandsworth Board of Works* (1863) 143 ER 414, the principle was stated thus:

“Even God did not pass a sentence upon Adam, before he was called upon to make his defence. “Adam” says God, “where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat.”

14. So far as the contention of the respondents that the petitioner has now been issued the show cause notice by the State Government on 28.08.2018 is concerned, the fact that the respondents have already acted upon the order of cancellation of promotion dated 17.07.2018 and the petitioner was sent back to his original post of Assistant Teacher Panchayat (but for the interim protection granted by this Court) would reveal that the subsequent show cause notice which the State Government has now issued to the petitioner would amount to only a post decisional hearing. In the opinion of this Court it would be a justifiable action on the part of the respondents particularly when the impugned order has an effect of the petitioner being reverted back to the post of Assistant Teacher after having worked on the promoted post of Teacher Panchayat for a period of more than one year. Without entering into the other aspect on technicalities, the impugned order stands set aside/quashed restoring the position of the petitioner on the post of Teacher Panchayat. If at all, the respondents intend to proceed further, it is expected that the respondents would grant an opportunity of hearing to the petitioner and thereafter the respondents would

be at liberty to initiate proceedings in accordance with the law governing the field. It is also expected that while granting an opportunity of hearing, the respondents would give them sufficient time to respond back to the notice. Needless to mention that the petitioner also is expected to render all necessary cooperation in the event if the respondents initiate fresh proceedings under the provisions of the law seeking cancellation of promotion.

15. Accordingly, the writ petition stands allowed and disposed of.

Sd/-

**(P. Sam Koshy)
Judge**