

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4544 of 2015

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1. Kumari Preeti D/o Shri Brajnandan Singh R/o. Village- Nayaka Lohar Tola ,
PO and P.S. - Revilganj, District- Saran .
 2. Ritesh Ranjan S/o Shri Surendra Kumar Ojha , R/o village - Ratanpur, Ojha
Tola, P.O. - Chapra, PS- Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources
Department, Government of Bihar, Patna
2. The Special Director, Secondary Education- Sanskrit , Govt. of Bihar, Patna.
3. The Bihar Sanskrit Siksha Board , through its Secretary , having its office at
Boring Canal Road, East, Patna
4. The Chairman , Bihar Sanskrit Siksha Board, Boring Canal Road , East ,
Patna
5. The Secretary, Bihar Sanskrit Siksha Board, Boring Canal Road, East, Patna.

... .. Respondent/s

Appearance :

For the Petitioners	~	:	Mr. Namrata Mishra, Adv.
For the Respondents No. 1 & 2	:	:	Mr. Jainendra Kumar Sinha, AC to SC-7
For the Respondents No. 3 to 5	:	:	Mr. S.S.Sundram, Adv.
			Mr. Shashank Shekhar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 29-04-2019

1. The present writ petition has been filed for declaring that Clause 5 (ja) of the State Government Resolution no. 970 dated 31.08.2013, which provides that employees of Bihar Non-Government Sanskrit Schools appointed after 15.02.2011 will be entitled to fixed salary, is not applicable to the petitioners herein inasmuch as the petitioners herein, though appointed after 15.2.2011, have been appointed in regular pay scale. The petitioners further pray for quashing of paragraph



(ka) of Memo no. 1689 dated 25.04.2014, which has been issued by the Bihar Sanskrit Shiksha Board, Patna in light of the aforesaid Government Resolution dated 31.08.2013, whereby it has been declared that all teaching and non-teaching staff of the Bihar Non- Government Sanskrit Schools, who have been appointed after 15.02.2011, would be treated to have been automatically converted to the system of fixed salary.

2. The case of the petitioners in brief is that in pursuance of approval having been granted to the Managing Committee of the school in question by the Bihar Sanskrit Siksha Board (hereinafter referred to as 'the Board'), an advertisement was issued in the daily Hindi Newspaper Aaj on 03.10.2013 for making appointment on two posts of Graduate Assistant Teacher, in the school in question, on the sanctioned pay scale, whereupon the petitioners had applied and pursuant to a selection process having been undertaken by the Managing Committee of the School in question, the petitioners were selected & appointed vide letter dated 20.10.2013. The petitioners joined on the post of Graduate Assistant Teacher in the school on 21.10.2013 and the services of the petitioners were granted approval by the Sanskrit Shiksha Board, Bihar, Patna vide memo dated 31.10.2013 in the pay scale of Rs.



1400.00 - 2600.00.

3. It is a matter of record that the State Government had implemented the 5th pay revision as also the 6th pay revision for its employees including the teaching and non-teaching staff of the Government Primary and Middle Schools with effect from 1.1.1996 and 1.1.2006 respectively, however, the financial /monetary benefits have been made payable with effect from 1.4.1997 and 1.4.2007 respectively. Nonetheless, as far as the Non-Government Recognized Sanskrit School Teachers are concerned, the Government has not granted 5th and 6th pay revision to them. However, subsequently the State Government has revised the pay scale of the teaching / non-teaching staff of the Non-Government Recognized Sanskrit Schools vide Resolution No. 970 dated 31.8.2013, with effect from 1.4.2013, with the condition that they would not be entitled for any annual increments and moreover, Clause 5 (ja) thereof, stipulates that all such employees, who have been appointed after 15.02.2011, would be entitled to payment of fixed salary only and accordingly, the grant shall be paid by the State Government to the concerned institutions. As a follow-up action, the Bihar Sanskrit Shiksha Board has issued Memo No. 1689 dated 25.4.2014, informing the Secretaries of the Managing



Committee and the Headmasters of the Non-Government Recognized Sanskrit Schools that all the teachers and staffs, who have been appointed after 15.02.2011, will be treated (automatically converted) to be on fixed salary.

4. It is the case of the petitioners that they have been appointed in the regular pay-scale as per the provisions of Bihar Rajkiya Sanskrit Seva Shart Niyamawali, 1976 (herein after referred to as "the Niyamawali, 1976") and till date, the Non-Government Sanskrit Schools are being managed and controlled as per the provisions of the said Niyamawali, 1976 and the same does not provide for appointment of teachers on fixed salary.

5. It appears that on account of coming into force of the aforesaid Government Resolution dated 31.8.2013, the Board thought it proper to modify its letter no. 6072 dated 31.10.2013, whereby and whereunder it had given approval to the appointment of the petitioners on the post of graduate assistant teacher in the pay-scale of Rs. 1400/- - 2600/-, thus the Board, by a letter dated 06.07.2015, had modified the aforesaid letter no. 6072 dated 31.10.2013 to the extent that instead of the petitioners being entitled to the pay-scale of Rs. 1400/- -2600/-, they would be paid fixed salary as per the departmental letter



no. 970 dated 31.8.2013.

6. It is imperative to state that during the interregnum period i.e. during the pendency of the present writ petition, much water has flown and, in fact, the learned Division Bench of this Court by a judgment dated 27.3.2019 passed in CWJC No. 985 of 2015 (*Imran Alam & Anr. v. The State of Bihar & Ors.*) has quashed the aforesaid notification of the State Government dated 31.8.2013 though on the ground that the same cannot have a retrospective effect in the case of those teaching and non-teaching staff who have been appointed prior to 31.8.2013. It would be relevant to reproduce paragraphs No.13 and 14 of the aforesaid judgment dated 27.03.2019 herein below:-

“13. The petitioners are Teachers of such Madarasas and Schools that stood recognized and aided prior to 15.02.2011. The impugned Resolution dated 31.8.2013 quoted herein above in Clause 6 converts the pay-scales of those Teachers who were appointed in such schools after 15.02.2011 with retrospective effect. This was therefore impermissible as the matter under consideration on 15.2.2011 was of giving a fixed pay-scale to those Madarasas who had not been



recognized up to 15.02.2011, and were found eligible after inquiry in terms of the said order of the Government. The 15.02.2011 Resolution therefore did not contemplate reduction of salary of those who were getting a regular pay-scale in recognized and aided Madarsas against posts sanctioned prior to 15.02.2011 which formed a different class. The petitioners were deprived of the regular pay-scale for bringing about an equality in respect of institutions which were not subject matter of the Resolution dated 15.02.2011. The 15.02.2011 resolution does not stipulate any restriction of regular pay-scales. The State Government may have been under some compulsion to reflect equality in its actions as they agreed to give a fixed pay-scale to the Madarsas that were recognized after 15.02.2011 as those Teachers may have demanded a regular pay-scale, but the same could not have been made a ground for deprivation of the pay-scale admissible to sanctioned posts in respect of the Madarsas and Schools that stood recognized and aided prior to 15.02.2011. The said benefits could not have been withdrawn retrospectively as the



petitioners even though appointed after 15.02.2011 but before 31.08.2013 were occupying posts that were recognized and aided even prior to 15.02.2011 with regular pay-scale. The posts had not been abolished nor their pay-scales had been reduced when the petitioners were appointed which was admittedly prior to 31.08.2013. The shifting and adjustment of financial burden adopted by this discriminatory process therefore is an irrational exercise and is both arbitrary and discriminatory. If the State Government chose to give a lesser pay-scale to Madarsas which were unrecognized and unaided but were recognized after 15.02.2011, the same formed a separate class and it cannot be clubbed together for the purpose of revising the benefits of the petitioners who were in their own right entitled and were already getting a regular pay-scale prior to 31.08.2013. The impugned Resolution dated 31.08.2013, therefore, cannot apply in the case of those who have been appointed prior to 31st August, 2013.

For all the aforesaid reasons, the impugned action and Resolution to the aforesaid effect



converting the pay-scale of the petitioners cannot be sustained and is, hereby, quashed insofar as it relates to the petitioners.

14. We, accordingly, allow the writ petition and declare that the petitioners will continue to get the same salary that they were getting prior to the impugned resolution together with all arrears on that account that shall be released forthwith within a period of three months from today”.

7. The learned counsel appearing for the petitioners submits that the circular of the State Government dated 15.02.2011 would not come in the way of the petitioners since the same firstly pertains to the teaching and non-teaching staff of Madarsa School and moreover, the same categorizes the existing madarsa into two categories i.e. one which are having recognition from a period prior to 15.02.2011 and the others which were not having any recognition and were subject to inspection for the purposes of grant of recognition. In fact, in the said resolution dated 15.2.2011 it has been provided that those existing recognized and aided madarsa schools which stood recognized prior to 15.2.2011, the teaching and non-teaching staff of such schools



would be granted regular pay scale, however, those which were found to be fulfilling the requisite criteria, upon an inspection being held and were recognized subsequent to 15.2.2011, in such cases, the teaching and non-teaching staff would be entitled to a fixed pay scale. The learned counsel for the petitioners further submits that the said resolution of the Government dated 15.2.2011 nowhere specifies or refers to the Sanskrit Schools, hence the cutoff date fixed in the aforesaid resolution dated 31.8.2013 i.e. 15.02.2011 is arbitrary and without any rationale. Secondly it is submitted that the service of the petitioners are governed by the Bihar State Non-Government High School (Service Conditions) Rules, 1976 and their cases are governed by the resolution of the State Government dated 8.12.1982 i.e. Annexure-16 at running page 106 of the writ petition and the State Government circular dated 15.2.2011, wherein it has been specifically provided that those Non-Government Sanskrit Schools which have been granted recognition prior to the issuance of the said circular, the teaching and non-teaching employees of such schools would be entitled to regular pay scale and the State Government would bear the expenses. It is submitted that the afore-said resolution dated 8.12.1982 has neither been recalled nor annulled till date,



hence, would hold the field. Thirdly, it is submitted that as far as the applicability of the circular dated 31.8.2013, upon the Sanskrit Shiksha Board are concerned, the learned Division Bench of this Court, in a judgment dated 27.3.2019 passed in CWJC No. 15299 of 2015 (*Rajnikant Kumar & Anr. vs. The State of Bihar & Ors.*) and other analogous cases, has held as follows:-

“ These five writ petitions relate to the claim of salary by such teachers who are appointed in Sanskrit Schools and who claim to have been recognized prior to 15.02.2011 and are amongst the 531 schools who were on the grant-in-aid list prior to the aforesaid date. These petitioners have also been deprived of the benefits to which they were entitled by the impugned resolution dated 31st August, 2013 which has already been quashed by us today to the extent indicated in our judgment in C.W.J.C. No. 985 of 2015 and, therefore, the petitioners would also be entitled to the same benefits on the same terms.

These writ petitions are also allowed accordingly with consequential benefits.”



8. The learned counsel for the petitioners submits that apart from the grounds taken herein above, the case of the petitioners is identical to the writ petitions of aforesaid judgment rendered in the case of ***Rajnikant Kumar*** (supra) inasmuch as the school in which the petitioners have been appointed was recognized much prior to 15.2.2011 i.e. in the year 1983 and is amongst 538 schools which were recognized prior to the aforesaid date. It is submitted that the petitioners cannot be deprived of the benefits to which they were entitled, by the aforesaid resolution dated 31.8.2013, which has already been quashed by the learned Division Bench of this Court by a judgment dated 27.3.2019 passed in the case of Imrran Alam (supra), hence similar benefits is liable to given to the petitioners herein.

9. Per contra, the learned counsel for the State has submitted that if the learned Division Bench of this Court has granted similar benefits to similarly situated petitioners by the judgment dated 27.3.2019 passed in the case of Rajnikant Kumar (supra), he cannot have any objection in allowing similar benefits to the petitioners of the present writ petition, however, the only point of distinction is that the petitioners herein were appointed subsequent to the coming into force the said circular dated 31.8.2013, hence the case of the petitioners is distinguishable



from the aforesaid case of ***Rajnikant Kumar*** (supra).

10. Per contra, the learned counsel for the Sanskrit Shiksha Board submits that he is bound by the action taken by the State Government.

11. I have heard the learned counsel for the parties and gone through the materials on record and I find that in the Government circular dated 31.8.2013 (Annexure-6 to the writ petition), under Clause 5 (ja), it has been postulated that such employees, who have been validly appointed after 15.02.2011, would be paid fixed salary and the basis for fixing the cutoff date of 15.02.2011 is the resolution of the Human Resources Development Department, Government of Bihar, Patna dated 15.2.2011, however, this Court finds that the said resolution dated 15.2.2011, which can be found at Annexure-16, running page no. 107 of the brief, pertains to only Madarsas and there is no mention about Sanskrit Schools, hence, this Court is of the view that as far as the Sanskrit schools are concerned, the said cutoff date of 15.02.2011 does not have any significance or relevance, hence cannot be said to be based on any rationale. Thus, the techniques of construction known as reading down will have to be applied inasmuch as reading down puts into



operation the principle that so far as it is reasonably possible to do so, legislation/statute/resolution should be construed as being within power since it has the practical effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the court will construe it in a more limited sense so as to keep it within power. In this regard, it would be relevant to refer to a celebrated judgment rendered by the Hon'ble Apex Court in the case of ***Delhi Transport Corpn. v. D.T.C. Mazdoor Congress***, reported in 1991 Supp (1) SCC 600, paragraphs No. 320, 324, 326 and 329 whereof are reproduced herein below:-

"320. Statutory construction raises a presumption that an Act or a provision therein is constitutionally valid unless it appears to be ultra vires or invalid. The legislature, subject to the provisions of the Constitution, has undoubtedly unlimited powers to make law. In fairness to the learned Attorney General, he agrees that the impugned provisions are per se invalid. But he attempted to salvage them by resorting to the doctrine of reading down.

324. At page 92 of the *Cross Statutory Interpretation*, the author has stated that: "The power to add to, alter or ignore statutory words is an extremely limited one. Generally speaking it can only be exercised where there



has been a demonstrable mistake on the part of the draftsman or where the consequence of applying the words in their ordinary, or discernible secondary, meaning would be utterly unreasonable. Even then the mistake may be thought to be beyond correction by the court, or the tenor of the statute may be such as to preclude the addition of words to avoid an unreasonable result.” Therefore, the Doctrine of Reading Down is an internal aid to construe the words or phrase in statute to give reasonable meaning, but not to detract, distort or emasculate the language so as to give the supposed purpose to avoid unconstitutionality.

326. It is, thus, clear that the object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid. In this regard it is equally of necessity to remind ourselves as held by this Court in *Minerva Mills case* [(1980) 3 SCC 625, 642 and 657 (para 64) : (1981) 1 SCR 206, 239 and 259] that when the effect of Article 31 was asked to be read down so as to save it from unconstitutionality this Court held that it is not permissible to read down the statutory provisions when the avowed purpose is to confer power on an authority without any limitation whatever and that at page 259-D and G it was held that the principle of reading down cannot be used to distort when words of width are used even advertently. In *Elliott Ashton Welsh, II v. United States* [26 L Ed 2d 308, 327 : 398 US 333 (1970)] Harlan, J. at page 327 held that:-



“when the plain thrust of a legislative enactment can only be circumvented by distortion to avert constitutional collision, it can only by exalting form over substance that one can justify veering off the path that has been plainly marked by the statute. Such a course betrays extreme skepticism as to constitutionality and in this instance reflects a groping to preserve conscientious objector exemption at all costs. I cannot subscribe wholly to emasculated construction of a statute to avoid facing constitutional question in purported fidelity to the statutory doctrine of avoiding unnecessary resolution of constitutional issues.”

329. I am, therefore, inclined to hold that the courts though, have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. But when the offending language used by the legislature is clear, precise and unambiguous, violating the relevant provisions in the Constitution, resort cannot be had to the doctrine of reading down to blow life into the void law to save it from unconstitutionality or to confer jurisdiction on the legislature. Similarly it cannot be taken aid of to emasculate the precise, explicit, clear and unambiguous language to confer arbitrary, unbridled and uncanalised power on an employer which is a negation to just, fair and reasonable procedure envisaged under Articles 14 and 21 of the Constitution and to direct the authorities to record



reasons, (*sic*) unknown or unintended procedure, in the manner argued by the learned counsel for the appellants."

Therefore, this Court is of the view that the aforesaid State Government circular dated 31.8.2013 has to be read down so as to exclude the Sanskrit Schools.

12. This Court further finds that the petitioners are governed by the Bihar Rajkiya Sanskrit Seva Shart Niyamawali, 1976, which has been replaced by the Bihar Arajkiya Sanskrit Seva Shart Niyamawali, (till Madhyma level), 2015 and the said rules nowhere provide for appointment of teachers on fixed salary basis, hence, on this ground as well, this Court finds that the provisions as contained in Clause 5 (ja) and Clause 6 of the State Government notification dated 31.8.2013 has to be read down so as to harmonize the same with the provisions contained in Bihar Rajkiya Sanskrit Seva Sharta Niyamawali, Rules 1976 and Bihar Arajkiya Sanskrit Seva Sharta Niyamawali, (till Madhyma level), Rules 2015 as also with the provisions contained in the aforesaid Government's resolution dated 08.02.1982, whereby and whereunder regular pay-scales have been prescribed for the teachers like the petitioners herein, and further with a view to exclude the applicability of the said Clauses of the Government resolution dated 31.8.2013 upon the



petitioners herein since giving a literal construction to the said clauses would be contrary to the rules / regulations / conditions of service, governing the petitioners herein from before. In this regard, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***CIT v. Hindustan Bulk Carriers, reported in (2003) 3 SCC 57***, paragraphs No. 14 to 21 whereof are reproduced herein below:-

14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See *Broom's Legal Maxims* (10th Edn.), p. 361, *Craies on Statutes* (7th Edn.), p. 95 and *Maxwell on Statutes* (11th Edn.), p. 221.]

15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See *Whitney v. IRC* [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in *CIT v. S. Teja Singh* [AIR 1959 SC 352 : (1959) 35 ITR 408] and *Gursahai Saigal v. CIT* [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)

16. The courts will have to reject that construction which



will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See *Salmon v. Duncombe* [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, *Curtis v. Stovin* [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in *S. Teja Singh case* [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes v. Doncaster Amalgamated Collieries* [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LKJB 865 : 163 LT 343 (HL)] referred to in *Pye v. Minister for Lands for NSW* [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India*.

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the



setting in which the clause to be interpreted occurs. (See *R.S. Raghunath v. State of Karnataka* [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See *Sultana Begum v. Prem Chand Jain* [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.

13. This Court further finds that the school in which the petitioners have been appointed and are working, was recognized in the year, 1983 and further, the posts, on which the petitioners are working, were sanctioned prior to the coming into force of either the Resolution dated 15.2.2011 or the State



Government notification dated 31.8.2013, hence, applying the principle of law laid down by the learned Division Bench in the case of ***Rajnikant Kumar*** (supra), it has to be held that the petitioners herein cannot be deprived of the benefits to which they were entitled, by coming into force of the impugned resolution dated 31.8.2013, inasmuch as the school in which the petitioners are working is not only recognized since 1983, but is also one amongst the 500 an-odd schools, which were recognized prior to the aforesaid cutoff date of 15.2.2011.

14. Another aspect of the matter is that admittedly, the State Government vide Resolution dated 8.12.1982 (Annexure-16 to the writ petition at running page no. 106 of the brief) has declared that the pay-scale of the teachers / staff members / employees of the recognized Sanskrit Schools will be similar to that of the teachers / staff members of the Government schools and the said Resolution dated 8.12.1982 still holds good inasmuch as the same has neither been recalled nor revoked till date. Moreover, the petitioners were appointed vide letter dated 20.10.2013, pursuant to an advertisement dated 03.10.2013, which had been published for making appointments on two post of graduate assistant teachers on regular pay-scale and the appointment of the petitioners on the post of assistant teacher



had also stood approved in the pay-scale of Rs. 1400/- -2600/- by the Board vide letter dated 31.10.2013, hence, this Court is of view that the service conditions of the petitioners cannot be modified or changed midway, to their disadvantage / detriment. In fact, no pre-decisional hearing has been granted to the petitioners before altering their remuneration vis-à-vis their conditions of service, thus, on this ground also, the action of the Board, as contained in letter dated 06.07.2015, annulling the regular pay scale of the petitioners, is arbitrary and violative of Article 14 of the Constitution of India. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***H. L. Trehan & Others Vs. Union of India & Others***, reported in (1989) 1 SCC 764, paragraphs no. 11 to 13 whereof are reproduced herein below:-

“11. One of the contentions that was urged by Respondents 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary powers have been vested in the official by sub-section (1) of Section 11 for the alteration of the terms and conditions of service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by Coril, but such alteration has to be made “duly” as provided in sub-section (2)



of Section 11 of the Act. The High Court has placed reliance upon the ordinary dictionary meaning of the word “duly” which, according to Concise Oxford Dictionary, means “rightly, properly, fitly” and according to Stroud's Judicial Dictionary, 4th Edn., the word “duly” means “done in due course and according to law”. In our opinion, the word “duly” is very significant and excludes any arbitrary exercise of power under Section 11(2). It is now a well-established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of Coril were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice.

12. It is, however, contended on behalf of Coril that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our



opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438] . What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three banks were excluded from employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows:-

“We may now point out that the learned Single Judge for the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there



is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could not represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.”

13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of Coril after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the



impugned circular.”

15. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also taking into account the judgment rendered by the learned Division Bench of this Court in the case of *Rajnikant Kumar* (supra), this Court holds that the petitioners are entitled to regular pay-scale and they cannot be deprived of such benefits, by the impugned resolution of the State Government dated 31.8.2013 or the impugned resolution of the Sanskrit Siksha Board dated 25.4.2014, hence, it is directed that the petitioners will continue to get the same salary as they were getting prior to issuance of the impugned letters dated 25.04.2014 and 06.07.2015 by the Bihar Sanskrit Siksha Board, Patna. Consequently, the writ petition stands allowed and the letter of the Bihar Sanskrit Shiksha Board, Patna dated 25.04.2014 as also the one dated 06.07.2015, qua the petitioners herein, stands quashed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.10.2020
Transmission Date	NA

