

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1734 of 2014

1. Neelkanth Tiwari And Ors. S/o Shri B.L.Tiwari Aged About 54 Years
Occupation Assistant Grade III, At Govt. Higher Secondary School
Makhanpur, Block Pali, Distt Korba, C.G., Chhattisgarh
2. Dinesh Kumar Tiwari S/o Lt Shri Har Prasad Tiwari Aged About 57
Years Occupation Assistant Grade III At Unified Tribal Development
Project, Korba, Distt Korba, C.G., District : Korba, Chhattisgarh
3. Ram Sewak Kumbhkar S/o Shri Makhan Lal Kumbhkar Aged About
52 Years Occupation Assistant Grade III, At Office Of Block Education
Officer, Pali, Block Pali, Distt Korba, C.G., District : Korba,
Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh And Ors. Through Secretary, Tribal
Development Department, Ministry, Mahanadi Bhawan, Raipur C.G.,
Chhattisgarh
2. The Commissioner Tribal Development Department, Mahanadi
Bhawan, Raipur, Distt Raipur, C.G., District : Raipur, Chhattisgarh
3. The Assistant Commissioner, Office Of Tribal Development
Collectorate Korba, Distt Korba, C.G., District : Korba, Chhattisgarh
4. The Collector Korba, Distt Korba, C.G., District : Korba, Chhattisgarh
5. Shri Yogesh Awashthi Occupation- Peon At Higher Secondary School
Tribal Department, Korba, Distt Korba, C.G., District : Korba,
Chhattisgarh

---- Respondent

WPS No. 3194 of 2014

1. Smt.Rajkumari Parihar W/o Shri Shiv Singh Parihar Aged About 51
Years R/o Chaitma Village Chaitma Po Pali Ps. Korba C.G. ,
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh And Ors. S/o Through The Secretary, School.
Education Department Mahanadi Bhawan, New Raipur C.G.,
Chhattisgarh
2. The Commissioner Tribal Development Department, Mahanadi
Bhawan, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh
3. The Assistant Commissioner, Office Of Tribal Development
Collectorate Korba, Distt Korba, Cg, District : Korba, Chhattisgarh
4. The Collector Korba, Distt Korba, Cg, District : Korba, Chhattisgarh

5. Shri Yogesh Awashthi Peon At Higher Secondary School Tribal Department, Korba, Distt Korba, Cg, District : Korba, Chhattisgarh
6. Dashrath Lal Jaiswal Peon At Higher Secondary School Tribal Department Korba C.G.

----- Respondents

For Petitioners	: Shri K.R. Nair with Shri Govind Ram Miri, with Shri Basant aiwartya, Advocates
For State	: Shri Rahul Jha, Govt. Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07.01.2021

1. Since the dispute involved in both the two writ petitions being common, the impugned order also being identical and the grounds raised by either side in defence also being common, this Court proceeds to decide the two writ petitions by a common order.
2. The challenge in the present writ petition is to the impugned order dated 25.03.2014 vide the impugned order, vide which the petitioners stand reverted from the post of Assistant Grade III to the post of Peon.
3. The brief fact of the case is that all the petitioners herein total four in number were initially appointed as daily wage employees under the respondents on different dates and in due course of time, their services were placed under the contingency establishment and further regularized with the department. Since the petitioners had the qualification for promotion to the post of Assistant Grade-3, the petitioners on the basis of their seniority as it stood in the year 2008 was granted promotion vide order dated 07.10.2008 from the post of peon to the post of Assistant Grade III.

4. All the petitioners immediately joined the services as Assistant Grade III and continued to discharge the duty uninterruptedly till the impugned order Annexure P/1 dated 25.03.2014 was passed. Whereby the petitioners were reverted from the post of Assistant Grade III back to the post of peon, it is this order which is under challenge in this writ petition.
5. From the reading of the impugned order, it reflects that the same was passed taking into consideration an observation made by the Division Bench of this High Court in Writ Appeal No. 230/2011 decided on 10.07.2013. It is pertinent to mention at this juncture that subsequent to the promotion order issued in favour of the petitioner there seems to be two persons being dissatisfied with the promotion namely Shri Yogesh Awasthi and Shri Dasharath Lal Jaiswal both of whom filed a writ petition i.e. WP(S) No. 1485/2011 which got dismissed on 18.03.2011. Against the rejection of the writ petition, the two persons preferred a Writ Appeal i.e. W.A. No. 230/2011.
6. The Writ Appeal finally got disposed of on 10.07.2013 wherein the Division Bench of this Court only granted the liberty to the two appellants to prefer a representation before the State Authorities in-respect-of their grievance and such representation if made to be considered in accordance with law.
7. It is said that pursuant to the disposal of the Writ Appeal, those two persons preferred a representation before the authorities concerned and the on the basis of which the District Collector issued the impugned order Annexure P/1 in respect of all the petitioners on 25.03.2014.

8. The challenge to the impugned order of reversion is firstly on the ground that after having worked for a period of more than six years, the order of reversion could not have been passed without at-least giving an opportunity of hearing to the petitioners.
9. It is categorically pleaded by the petitioners and submitted that though there is a reference in the impugned order of the petitioners having been called upon to explain but in-fact there was no such proceedings drawn and that no show-cause notice at any point of time was issued neither was any written explanation sought for, from the petitioners before the impugned order was passed.
10. According to the petitioners, it is a settled position of law that once when a right has been accrued in favour of the person and any order adversely affecting the right of the person, is passed the least that was expected was to at-least serve a show cause notice before the detrimental order to the petitioners was passed. The impugned order deserves to be set aside on the said ground.
11. The other ground raised by the petitioners was that taking into consideration the existing seniority list that was available in the department it is clearly reflected that all the petitioners were senior to the two persons who have raised an objection i.e. Shri Yogesh Awasthi and Dasharath Lal Jaiswal and accordingly the promotion orders issued by the respondents were proper legal and justified and there were no occasion for having interfered with this.
12. It was the further contentions of the petitioners that if at all if the two persons i.e. the private respondents in these cases were entitled for promotion, the respondents ought to had promoted those persons

upon the reversion of the petitioners but the fact is that even those two persons were never promoted even after the reversion order issued against the petitioners.

13. The last ground raised by the petitioners challenging the impugned order is that if at all if the orders of reversion were to be passed the respondent-authorities ought to have checked the person who were placed at the bottom in the order of promotion dated 07.10.2008 and the two persons who were promoted from the bottom should have been replaced by the two persons who had claimed. This has again not been done as there are many persons who were appointed subsequent to the petitioners and has also been promoted to the post of Assistant Grade-3 and who were placed below the petitioners in the seniority list as peon still happen to continue in the department on the promoted post and it was only the petitioners who have been picked up and victimized and reverted without any justifiable reason provided.

14. Learned counsel for the State opposing the petition on the other hand submits that from the pleadings available with the reply to the writ petitions and the documents enclosed therein, it reflects that the necessity for issuance of the impugned order arose on account of the representations which Shri Yogesh Awasthi and Dasharath Lal Jaiswal have filed and those representations were to be decided in the light of the observation made by the Division Bench of this Court in Writ Appeal No. 230/2011. According to the State Counsel on verification of the records, it was found that the petitioners herein were regularized in the services of the respondent-State after the two private respondents i.e. Shri Yogesh Awasthi and Dasharath Lal

Jaiswal were regularized and as such if seniority is to be counted from the date of regularization, the two persons would automatically stand ahead of the petitioners and that is why the impugned order was passed. As regards, the issue of non granting of an opportunity of hearing, the State Counsel referring to the impugned order submits that it reflects the petitioners should have been called upon by the authorities before issuance of the impugned order which needs the requirement of natural justice of an opportunity of hearing.

15. Having heard the contentions put forth on either side and on perusal of records, admittedly from the seniority list that was available with the department as on date of promotion when the promotion dated 07.10.2008 was passed, the petitioners were shown senior to the two private respondents i.e. Shri Yogesh Awasthi and Dasharath Lal Jaiswal. The promotion orders having been issued on 07.10.2008 and the petitioner have promptly joined the promoted post and they had worked on the promoted post for well over six years and the impugned order has been passed abruptly without any written show-cause notice issued to the petitioners or a written explanation called from the petitioners in-respect-of the alleged wrongful promotion said to have been given to the petitioners.

16. It is settled position of law that in the event of an order passed by the respondents particularly when the order has an adverse civil consequence the least that is expected is an opportunity of hearing given by at-least issuing with a show-cause notice. In the instant case, the pleadings of the State does not show any show-cause notice to have been issued to the petitioners before the impugned was passed.

Coupled with the fact that there is a categorical denial of even an oral hearing being given to the petitioners by the authorities which again have not been rebutted in any manner by the respondents.

17. 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:-

13. The law in this regard has been settled by several decisions of this Court. The principle that emerges 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.”

18. 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 held 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.”

19. 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.)".

20. 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".

21. Taking note of the discussions rendered in the judgments quoted above and the ratio laid down therein, it clearly reflects that the least that is required before passing of an order which has adverse civil consequence is of an opportunity of hearing to be provided to the concerned person. In the instant case, if we apply the said analogy, it would reveal that the petitioners herein got promoted way back on 07.10.2008. They started getting benefits attached to the post of Assistant Gr III from the said date. They received the benefit for about more than 6 years. The impugned order cancelling the promotion order granted on 07.10.2008 was passed abruptly without any opportunity of hearing being provided to the petitioner.

22. Given the fact that there is an admitted denial of an opportunity of hearing before the impugned order was passed particularly when the

petitioners have put in more than six years of service on the promoted post. The impugned order deserves to be interfered with only on the said grounds of having not granted an opportunity of hearing without entering into the other merits of the case.

23. The impugned order therefore in both the writ petitions dated 25.03.2014 not being sustainable deserves to be and is accordingly quashed. As a consequence the petitioners are to be brought back to the post of Assistant Grade-III and they would be granted notional benefit for the intervening period from 2014 till date, including that of fixation, revision and promotion if any. While allowing the writ petitioners, this court reserves the right of the respondents to take an appropriate decision if they intend to go against the petitioners after following due procedure of law and would also consider whether the petitioners were in-fact the persons who were placed at the bottom for being reverted particularly when a large number of people were promoted vide order dated 07.10.2008. The respondents also would have to consider as to why only two should not have been reverted when there were only two persons who had raised an objection. The writ petition accordingly stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
Judge**