

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16983 of 2018

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1. Vimal Kumari and Ors Wife of Hari Kishor Ray, Resident of Village-Gardha, P.O. Bochcha, P.s. Bochcha, P.S. District-Muzaffarpur.
 2. Rangila Kumari, Daughter of Maheshwar Ray, Resident of Village P.O.-Manjhauliya, P.S.-Sakra, District-Muzaffarpur.
 3. Kavita Kumari, Daughter of Jagdeo Thakur, Resident of Village-Laxmipur Arar, P.O. Bakhra, P.S.-Saraiya, District-Muzaffarpur.
 4. Rinku Kumari Daughter of Devendra Choudhary, Resident of Village-Chaupal Madan, P.O.-Sanahi, P.S.-Bochcha, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Muzaffarpur.
3. The District education Officer, Muzaffarpur.
4. The District Programme Officer, Establishment, Muzaffarpur.
5. The Block Education Officer, Bandara, Muzaffarpur.
6. The Member Secretary-Cum Gram Panchayat Secretary, Badgaon Panchayat, Block Bandara, Muzaffarpur,
7. The Member Secretary-Cum Gram Panchayat Secretary, Patsara Panchayat, Block Bandara, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Amish Kumar, Adv.
For the Respondent/s : Mr.Madhaw Pd. Yadaw- Gp23

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

- 2 16-09-2022 1. Heard the parties through Video Conferencing.
2. The petitioners have challenged the order dated 30.11.2016 and 02.12.2016 passed by the respondent nos. 6 and 7, whereby their services have been terminated as per terms of condition no. 5 of the appointment order dated 12.11.2016, which provided that if, later on, the eligibility qualifications are



found to be fraudulent or it is found that the appointment has been obtained by any wrongful means, the appointment shall be cancelled.

3. Learned counsel submits that the order has been passed terminating his services without giving him opportunity of hearing. He relies on the Judgment passed by the Court in Afsana Khatoon Vrs. The State of Bihar & Ors, passed in C.W.J.C. No. 4775 of 2018 on 25.07.2022 and order passed by the Division Bench in L.P.A. No. 501 of 2017, dated 14.11.2017 to submit that the least which the respondents were required to do were to give him opportunity of hearing.

4. In the opinion of this Court, each case has to be examined on its own peculiar facts, while the law may be followed, however, the same has to be applied on facts of each case.

5. In the present case, the petitioners services have been sought to be terminated on the ground of cancelling their appointment as their certificates have been found to be forged. The petitioners have not stated that their certificates are genuine. Thus, they have not challenged the basis on which their orders of appointment have been cancelled.

6. Cancellation and removal have two different



connotations. Cancellation of appointment means that the appointment itself is no more incidence meaning that is never issued. Whereas, the removal means that the service rendered will be treated as recognised, but henceforth disallowed to work.

7. Thus, the principles of natural justice may have an application where a person is removed from service, but in cases where the appointment itself is canceled, on the basis of the condition of appointment being not fulfilled, then the principles of natural justice would have no application and the same would come within the exceptions as held by the Hon'ble Supreme Court in **1985 (3) SCC 398 (Union of India & Anr. V Tulsiram Patel)**, wherein the Hon'ble Supreme Court has held as under:

“97. Though the two rules of natural justice, namely, nemo iudex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established they are none the less not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor



can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the Constitution of the Tribunal which has to decide particular matter and rules by which such Tribunal is governed. There is no difference in this respect between the law in England and in India. It is unnecessary to refer to various English decisions which have held so. It will suffice to reproduce what Ormond, L.J., said in Norwest Holst Ltd. v. Secretary of State for Trade and others L.R. [1978]1 Ch.201 (at page 227):

"The House of Lords and this Court have repeatedly emphasised that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case. One of the most important of these circumstances, as has been said throughout the argument, is, of course, the provisions of the statute in question: in this case [sections 164](#) and [165](#) of the Companies Act 1948."

101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded.



There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J.Mohapatra & Co. and another v. State of Orissa and another [1985] 1 S.C.R. 322,334-5. So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision or the Constitution, for a Constitutional provision has a far greater and all-pervading



sanctity than a statutory provision. In the present case, clause (2) of [Article 311](#) is expressly excluded by the opening words of the second proviso and particularly its key-words this clause shall not apply. As pointed out above, clause (2) of [Article 311](#) embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a Constitutional provision, namely, the second proviso to clause (2) of [Article 311](#), there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the Constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to [Article 14](#). This is, however, the only scope which [Article 14](#) can have in relation to the second proviso. but to hold that once the second proviso is properly applied and clause (2) of [Article 311](#) excluded, [Article 14](#) will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the



Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution - makers who inserted it in [Article 311\(2\)](#) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.”

8. Keeping in view above, this Court finds that the Judgments (supra) cited before this Court would have no application to the present facts of the case as the petitioners were unable to fulfill the conditions precedent for their appointment.

9. The writ petition is thus, found to be devoid of merits and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 1

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