

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 4669 of 2010

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Naresh Prasad Singh Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : M/s. L.K. Mohanty
and B.K. Jena,
Advocates

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MISS JUSTICE SAVITRI RATHO**

Date of hearing and judgment: 16.03.2022

DR. B.R. SARANGI, J. The petitioner, who was working as a driver under the Collectorate, Boudh, has filed this writ petition seeking to quash the order dated

09.09.1998 under Annexure-5, by which his appointment as driver has been withdrawn. He further seeks to quash the order dated 22.12.2009 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 1675 of 1998 under Annexure-7, by which the original application filed by him has been dismissed, and to issue direction to the opposite parties to appoint him as driver and grant all consequential service and financial benefits w.e.f. 09.09.1998.

2. The factual matrix of the case, in brief, is that the petitioner, having passed class-VIII and also possessing driving license of light vehicle, registered his name in the Employment Exchange, Boudh. In the year 1995, Collector, Boudh sent a requisition to the Employment Officer, Boudh to sponsor the name of eligible candidates to be considered for appointment as driver. Accordingly, the Employment Officer, Boudh sponsored the name of the petitioner, along with other eligible candidates, to face the recruitment test to be appointed as driver against the vacancies under

administrative control of Collector, Boudh. Pursuant to call letters issued by the Collector, Boudh, the petitioner appeared in the recruitment test and was selected, along with seven other candidates, for appointment to the post of driver in various offices in the district of Boudh depending on the actual vacancies. In the select list, the name of the petitioner found place at sl.no.8 and, as such, the select list was valid for a period of one year or till publication of result of the next recruitment test for drivers for Boudh district, whichever is earlier. But the tenure of the said select list was extended by the opposite party no.3, as the select list could not be exhausted in due time despite clear vacancies. Out of the said select list, one Hemanta Kumar Panda was appointed on 02.11.1995, Dharendra Kumar Jena was appointed on 14.02.1996, Satya Narayan Sethi was appointed on 04.10.1997 and Niranjan Guru was appointed on 06.10.1997. Similarly, on 15.09.1997, one Sanjeeb Kumar Pattnaik was appointed and his name

was also sponsored to DFO (T) Boudh for appointment against any substantive post.

2.1 Though the petitioner was selected by following due process of selection, but he was appointed as driver on ad hoc basis in spell basis. Being aggrieved by such action of the authority, the petitioner, along with one Ranjit Kumar Mishra, approached the authority to provide them regular appointment at par with the candidates, who have been appointed pursuant to such select list. On consideration of the same, the petitioner was appointed as driver, vide order dated 20.04.1998, and Ranjit Kumar Mishra was sponsored to the CDMO, Boudh for appointment as driver against the existing vacancy. Accordingly, the petitioner joined in his post and discharged the duty assigned to him by the authority. While he was so continuing, on 09.09.1998, the Collector, Boudh withdrew the appointment letter issued in favour of the petitioner on 20.04.1998, in pursuance of the letter dated 09.09.1998 of R.D.C. (SD), Berhampur. Being aggrieved by such order of withdrawal

of his appointment, the petitioner approached the Orissa Administrative Tribunal by filing O.A. No. 1675 of 1998, which was dismissed vide order dated 22.12.2009 under Annexure-7. Hence this application.

3. Mr. L.K. Mohanty, learned counsel for the petitioner vehemently contended that the petitioner, having been selected by following due process of selection and having given regular appointment, his appointment could not have been withdrawn by the order impugned dated 09.09.1998 under Annexure-5. As such, the tribunal, while considering the case of the petitioner, has failed to take note of the fact that the petitioner was appointed regularly and, therefore, any withdrawal of such appointment, is contrary to the provisions of law and violative of principles of natural justice. Thus, it is contended that the tribunal has committed gross error apparent on the face of record by dismissing the original application. Consequentially, he seeks for quashing of same.

4. Mr. A.K. Mishra, learned Addl. Government Advocate justifies the order passed by the Collector, Boudh withdrawing appointment of the petitioner from the post of driver, pursuant to letter dated 09.09.1998 under Annexure-5, and also the reasons assigned by the tribunal in the impugned order dated 22.12.2009 under Annexure-7, and contended that the writ petition should be dismissed.

5. This Court heard Mr. L.K. Mohanty, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, this writ petition is disposed of finally at the stage of admission.

6. The tribunal, as it reveals from the impugned judgment and order, has dismissed the original application and denied relief to the petitioner *inter alia* on the grounds that the appointment of the petitioner,

as driver, vide order dated 20.04.1998, was contrary to the Finance Department notification dated 20.03.1998 containing policy decision for resource mobilization and observance of economy, and was also against the circular issued on 08.06.1995 by the Welfare Department that any appointment violating the provisions of ORV Act, would be treated as voidable. To be more specific, the tribunal referring to the counter affidavit, which was filed on behalf of the opposite parties on 16.11.1998, observed that the petitioner was appointed against roster point no.1, which was reserved for ST candidate. The petitioner, being a candidate of UR category, could not have been appointed against the reserved vacancy and, therefore, his appointment was withdrawn by the Collector, Boudh on the basis of the letter dated 09.09.1998 of the RDC (SD) Berhampur, wherein it was indicated that the appointment of the petitioner was irregular and illegal. As such, with regard to opening of service book, enrollment under GIS and transfer to other offices, the tribunal has opined that

those cannot be considered as grounds for continuance in service, as claimed by the petitioner, and that since the appointment of the petitioner was temporary in nature, the same was liable to be terminated.

7. But the materials available on record clearly indicate that the petitioner was empanelled in the select list drawn up through regular process of selection for recruitment to the post of driver under the Collectorate, Boudh. Though the petitioner was initially appointed temporarily for 44 days, but subsequently, vide office order dated 20.04.1998, it was specifically mentioned that the petitioner, who was appointed as driver on temporary ad hoc basis, is allowed to continue as driver on regular basis in the scale of pay of Rs.950-20-1150-EB-25-1500/- per month with usual D.A. and other allowances as admissible from time to time and posted as such to the office of the Tahasildar, Boudh against the vacancy. There is thus no doubt that the petitioner was appointed on regular basis against regular vacancy and allowed to discharge his duty as driver pursuant to

selection made by the authority through regular process. In such circumstance, withdrawal of his appointment, vide order dated 09.09.1998 under Annexure-5, was to be done by following principles of natural justice. Nothing has been placed on record to indicate that principles of natural justice was complied with in the case of the petitioner while withdrawing his appointment, which was made through regular process of selection vide letter dated 20.04.1998. As such, before withdrawing the appointment of the petitioner, no show cause was called for, meaning therefore, the order of withdrawal of appointment was passed without complying with the principles of natural justice. Therefore, any action taken in violation of principles of natural justice, cannot sustain in the eye of law.

8. In **re, H.K. (An infant) case**, (1967) 1 All ER 226, Lord Parker opined that good administration and an honest or bona fide decision must require not merely impartiality, nor merely bringing one's mind to hear on the problem but acting fairly; and to the limited extent

that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply.

9. In **Schmidt v. Secretary of State for Home Affairs**, (1969) 1 All ER 904 (CA), Lord Denning, MR, expressed his view to the effect that where a public officer has power to deprive a person of his liberty or his property, the general principle is that it is not to be done without his being given an opportunity of being heard and of making representations on his own behalf. With particular reference to the application of the rules of natural justice in administrative action.

10. In **State of Orissa v. Dr. (Miss) Binapani Dei**, AIR 1967 SC 1269, the apex Court observed that even an administrative order or decision in matters involving civil consequences have to be made consistently with the rules of natural justice. The purpose of the rules of natural justice is to prevent

miscarriage of justice, the rules should be made applicable to administrative enquiries also.

11. In ***K.I. Shephard v. Union of India***, AIR 1988 SC 686, the apex Court expressed itself to the effect that natural justice now requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry, if one is held; and (c) effectively to prepare their own case and to answer the case, if any, they have to meet.

12. In ***Style (Dress Land) v. Union Territory, Chandigarh***, (1997) 7 SCC 89, the apex Court unequivocally stated that the administrative orders are required to be made in a manner in consonance with the rules of natural justice, when they affect the rights of the citizens to the property or the attributes of property. Duty to act fairly in discharge of administrative

functions and taking decisions adversely affecting the interest of a subject has now become an established principle of law.

13. In ***Re, Pergamon Press Ltd.*** (1970) 3 All ER 535, Lord Denning, MR observes that natural justice in its application to administrative law is defined to mean fair play in action. In all administrative actions the need is not so much to act judicially as to act fairly. It deserves to be noted that further the situation is away from anything that resembles a judicial or quasi-judicial situation, and further the question is removed from what may reasonably be called a justiciable question the more appropriate it is to reject an expression which includes the word 'justice' and to use instead terms, such as 'fairness', or 'the duty to act fairly'.

14. In ***Ravi S. Nayak v. Union of India***, AIR 1994 SC 1558 : 1994 Supp (2) SCC 641, the apex Court held that that natural justice constitutes a basic

element of a fair hearing, having its roots in the innate sense of man for fair play and justice.

15. In **Sarat Kumar Das v. Biswajit Pattanaik**, 1995 Supp (1) SCC 434, the apex Court held that in the field of administrative action, the principles of natural justice have been applied to ensure fair play and justice to the affected person. But the doctrine is not to cure all the ills in the process. Its application depends upon the factual matrix to improve administrative efficiency and expediency; and in order to meet out justice, the procedure adopted should be just and fair.

In view of the above settled position of law, this Court is of the considered view that since withdrawal of regular appointment of the petitioner has been done without complying the principles of natural justice, the same cannot sustain in the eye of law.

16. Furthermore, to justify the action of withdrawal of the appointment of the petitioner, it has been stated that while giving appointment, provisions of

ORV Act and Rules had been violated. But as it appears, despite repeated opportunity given, the State Counsel had not produced the relevant records before the tribunal. This fact gets ample support from paragraph-8 of the order sheet dated 22.12.2009 of the tribunal, wherein it has been clearly indicated that instead of repeated opportunity, the original roster was not produced by the opposite parties. The reliance placed on the letter dated 20.03.1998 of the Finance Department, wherein direction was given that the vacancy caused due to various reason shall not be filled up as a matter of routine and all proposals for filling up of base level posts will require the clearance of high power committee in the Government on the basis of proposal from the Secretaries of the Administrative Departments, and the existing posts already created shall not be filled up without specific approval of the high power committee. As such, the appointment of the petitioner was subject to various departments' vacancies and provisions of ORV Act. But, as it appears, the tribunal is well justified

in observing that no document was produced or rules cited to establish that the petitioner was appointed through due process of recruitment against a reserved vacancy.

17. It is admitted fact that on requisition being sent by the Collector, Boudh to the employment exchange, names of several candidates, including the petitioner, had been sponsored and, as such, the selection process was conducted and all total eight candidates, including the petitioner, were selected and out of them, many have been appointed on regular basis and they are continuing in service. As the petitioner was appointed subsequently, now a different stand is being taken by the authority that the petitioner was appointed against reserved vacancy. Thereby, pursuant to instructions issued by the RDC (SD), Berhampur, his appointment has been withdrawn.

18. Needless to mention here, this Court, vide order dated 11.07.2017, had directed the learned Addl.

Government Advocate to produce the roster register as well as outcome of de-reservation proposal at the time of hearing. Though the same was produced, but it has been indicated therein that the petitioner was appointed against reserved vacancy, for which his appointment was withdrawn and, as such, no reasons have been assigned in the order of withdrawal of appointment of the petitioner. Thereby, this Court is of the considered view that the order passed by the authority on 09.09.1998 withdrawing the appointment of the petitioner under Annexure-5 and consequential order passed by the Orissa Administrative Tribunal, Bhubaneswar in dismissing the O.A. No. 1675 of 1998 filed by the petitioner challenging such withdrawal of appointment, vide order dated 22.12.2009 under Annexure-7, cannot sustain in the eye of law and are liable to be quashed and are hereby quashed.

19. During course of hearing, it is brought to the notice of the Court that pursuant to a fresh selection conducted by the authority, the petitioner has been

already rendering serving w.e.f. 2002 and, as such, discharging his duty till date on contractual basis. Therefore, if the petitioner is still continuing in service, this Court is of the considered view that his case shall be considered by the opposite parties for regularization, if the same has not been done in the meantime, and he shall be extended all consequential service and financial benefits in accordance with law. Ordered accordingly.

20. In the result, the writ petition is allowed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO,J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 16th March, 2022, Ashok/GDS