

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 21517 OF 2012

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

AFR

R. Ramachandra Rao Petitioners
and another

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s. Pami Rath and
S. Gumansingh,
Advocates

For Opp. Parties : Mr. S. Jena,
Standing Counsel, S&ME Deptt.

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: 30.03.2022

DR. B.R. SARANGI, J. The petitioners, by means of this writ petition, seek to quash the order dated 24.02.2011 passed in O.A. No. 516 (C) of 2000 under Annexure-16,

by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack held that the appointment of the petitioners was irregular and illegal, being without any public advertisement or without sponsorship by the employment exchange and without following the prescribed recruitment rules. The tribunal also held that as per Orissa Education (Amendment) Act, 1989, the Managing Committee of K.S.U.B. Training College was defunct with effect from 14.08.1989, therefore, any appointment made by it is illegal and non-est. As such, the claim of the petitioners, that there were continuing for a spell on ad hoc basis, was negated on the basis of the clarification of the apex Court in the case of **Official Liquidator v. Dayanand**, (2009) 1 SCC (L&S) 943. While holding so, on the basis of concession sought by learned counsel for the petitioners for future appointment, as the petitioners were already over-aged for Government service, the tribunal, directed that the opposite parties are at liberty to consider the continuance of the petitioners in the said posts, as per

their earlier appointment orders, till such posts are filled up on regular basis, and allow the petitioners to appear in the next regular recruitment test by condoning their over age as per rule.

2. The factual matrix of the case, in brief, is that K.S.U.B. Training College, Bhanjanagar was established by the private management. Petitioner no.1 was recruited as Librarian, vide order dated 31.01.1990, while petitioner no.2 was initially recruited as a Clerk on the very same day and subsequently appointed as Laboratory Assistant on 25.05.1990. Thereafter, the college in question was taken over by the Government on 14.12.1990. While taking over the management of K.S.U.B. Training College, Bhanjanagar, vide letter dated 21.09.1991, one post of Demonstrator and one post of Librarian were created and approved. The post of Laboratory Assistant and Demonstrator are all identical and similar, although in some colleges it is known as Demonstrator and in some other it is known as Laboratory Assistant. Prior to

issuance of letter dated 21.09.1991 under Annexure-4, letter dated 21.08.1991 under Annexure-5 had been issued by the authority, by which the yardstick for the training college was issued by the Government of Orissa, wherein the post of Librarian and Demonstrator find place. After the college in question was taken over by the Government, without any rhyme and reason, the petitioners were denied employment by the Government, for which the petitioners, along with others approached the tribunal by filing O.A. No. 2134 of 1992, wherein the tribunal granted interim order, and by virtue of the interim order though the petitioners continued in service, but they were not paid their salary. During pendency of O.A. No. 2134 of 1992 before the tribunal, the petitioners were given assurance for regularization in service, for which they withdrew from the case, as is evident from the order sheet dated 27.09.1996.

2.1 After their withdrawal from the original application, the Government moved the file for

regularization of services of the petitioners and accordingly necessary order was passed on 17.10.1996 vide Annedure-7 wherein it was decided to regularize the services of the petitioners from 14.12.1990, i.e., from the date the college was taken over. Accordingly, direction was given to the Director, T&E and SCERT, Orissa to issue necessary orders. In compliance of the same, the Director, on 08.11.1996, asked the Principal to furnish the details of the petitioners about their continuance in the college. The principal in turn, on 29.11.1996, furnished the employment status of the petitioners to the Director, who, on being satisfied about the same, issued appointment orders in favour of the petitioners on 01.01.1997, in pursuance of which, the petitioners continued to remain in employment and got salary and other benefits as due and admissible to them.

2.2 Although withdrawal from the earlier original application, which was filed in the year 1996 by the petitioners jointly along with others, was subject to the

assurance given to the petitioners in regard to their absorption and accordingly necessary orders were passed by the Government in the relevant file, as is evident from Annexure-7 dated 17.10.1996, where decision was taken to adjust the petitioners, but due to some miscommunication or mischief at the level of the subordinate officers, the petitioners were given appointment on ad hoc/ term basis, though as a matter of fact the petitioners had been allowed to continue for such a long time with all service benefits applicable to regular government servants. To substantiate the same, though an application was filed before the tribunal in the subsequent original application to call for the relevant records, but the tribunal never bothered to go through the records and files while disposing of the matter. The order dated 01.01.1997, which was issued under Annexure-10, indicates that the petitioners were appointed for a period of one year or till regularization, whichever is earlier. Even though the ad hoc period was to come to an end on the expiry of one year period, the

petitioners had been allowed to continue on regular basis, by availing the benefits of G.I.S., G.P.F., loan facility and increments from time to time, and their service books were also opened.

2.3 While the matter stood thus, the petitioners were called upon, vide Annexures-13 and 14 both dated 27.01.2000, to show cause as to why their services would not be terminated. The said show cause notices were issued as a post decision taken vide order dated 13.01.2000, wherein it was held that appointment of the petitioners which was approved earlier erroneously was to be withdrawn after observing due process. Challenging such action, the petitioners approached the tribunal by filing O.A. No. 516 of 2000. By that time, the petitioners had already completed more than 10 years of service in the institution, as their initial appointment was 31.01.1990. In addition to that, they were regularized in service and allowed to continue with all service benefits. Considering the same, the tribunal passed interim order allowing the petitioners to

continue in employment and by virtue of such interim order they were continuing in service. In the counter affidavit filed by the State before the tribunal, through different stands were taken, the same were controverted by the petitioners by filing rejoinder affidavit. Even though the petitioners prayed for calling for records from the opposite parties, but the tribunal ignored such prayer. More so, in the rejoinder affidavit the petitioners though pleaded that letter dated 16.10.1995 of the Director was not in their possession and the same should be called for from the opposite parties to establish that appointment of the petitioners was on regular basis, but the tribunal, without taking into consideration the pleadings available on record and without calling for records as prayed by the petitioners, held in paragraph-8 of the impugned order that the appointment orders of petitioners were irregular and illegal and, by referring the judgment of the apex Court in **Dayanand** (supra), disposed of the original

application filed by the petitioners. Hence this writ petition.

3. Ms. Pami Rath, learned counsel for the petitioners vehemently contended that once the Government at its level had already decided on 13.01.2000 vide Annexure-15 to terminate the employment of the petitioners by observing formalities, issuance of Annexures-13 and 14 dated 27.01.2000, by the Director calling upon the petitioners to show cause, are sham exercise of power, fraud on the power, empty formality and is a clever ruse, which cannot sustain in the eye of law. It is further contended that natural justice is an important right, as a part of Article 14, being an integral part of the Constitution in the shape of Article 311 read with Article 14 of the Constitution of India, as has been determined by the apex Court from time to time, the aforesaid move of the opposite parties is liable to be thrown out in the eye of law, as the same is meant to hoodwink not only the petitioners but also the purpose of adjudication and the adjudicating

authorities. It is further contended that natural justice, in this case, has no meaning at all, when this is the real object as is evident from Annexure-15 dated 13.01.2000. It is further contended that on the basis of assurance given by the Government, petitioners withdrew from the litigation and subsequently the State Government gave appointment to the petitioners, who have already crossed the age bar to seek employment elsewhere, thereby, the State Government is bound by its own action and promissory estoppels and the general law of estoppels that stare at the State, which cannot take an ordinary citizen for granted in the aforesaid manner. Her further contention is that the tribunal, while passing the order impugned, has relied upon the judgment of the apex Court in **Dayanand** (supra), which followed the earlier judgment of the apex Court in the case of **Umadevi**, but even going by the said judgment, it is clear that by the time the petitioners moved the tribunal they had already completed 10 years of service and as such were entitled

to be regularized. But the tribunal was oblivious of the fact that the petitioners herein had already been regularized, which was sought to be nullified by the opposite parties in Annexures-13 and 14 in violation of natural justice. She further contended that the original application was heard on 27.01.2011 and was reserved for judgment and, thereafter, the matter never came up in the cause list. The judgment was delivered behind the back of the petitioners on 24.02.2011 and copies thereof were never sent to the petitioners or even to the counsel appearing for the petitioners as per Rule-21 of Orissa Administrative Tribunal Procedure Rules, 1986. But on query being made by the petitioners in the office of the tribunal, they came to know the result of the case and received the judgment through the advocate's clerk on 09.11.2012, though the judgment of the tribunal clearly indicates, vide memo no.3109 dated 08.04.2011, that copies to be forwarded to different parties. The same was not followed and the copies were never sent either to the petitioners or to the opposite parties or to

their counsel. Thereby, the tribunal has acted contrary to the rules applicable to it.

To substantiate her contention, learned counsel for the petitioners has relied upon the judgments of the apex Court in the cases of **H.L. Trehan v. Union of India**, (1989) 1 SCC 764; **K.I. Shephard v. Union of India**, (1987) 4 SCC 431; **Shekhar Ghosh v. Union of India**, (2007) 1 SCC 331; and of this Court in the case of **Shri Jagannath Temple Managing Committee v. Commissioner of Income Tax**, 2007 (Supp.2) OLR 973 : AIR 2008 Ori 37.

4. Per contra, Mr. S. Jena, learned Standing Counsel for School and Mass Education Department, justifying the order dated 24.02.2011 passed by the tribunal in O.A. No. 516 of 2000, contended that Orissa Education Act, 1969, which was amended w.e.f. 14.08.1989 and published in the Orissa Gazette No.1376 dated 21.08.1989, prescribed inter alia under

Section 7-B of the said Act that the State Government shall not recognize any private training college established prior to the said date. Thereby, the private management of the college in question was aware as on 21.09.1989 that the college has ceased to be a recognized college and, as such, the college being an un-recognized one, there was no functional justification for making any fresh recruitment. As such, appointments made thereafter were without any valid functional reasons or workload. It is further contended that as the petitioners, along with 10 others, were found to be surplus and they were appointed after the decision was taken at Government level on 29.11.1989, for taking over the college, they were treated as non-yardstick staff and were allowed to come to the college as per the interim order of the tribunal passed in O.A. No. 2134 of 1992. But their salary could not be paid as neither were they engaged in any tangible work nor budgetary provision was there. He, however, denied with regard to any assurance given by the government

to the petitioners for regularization of their service. As the petitioners withdrew from the case, they were offered ad hoc appointment for day to day management of the college and, while making such appointment, regularization of their services w.e.f. 14.12.1990 was not assured. It is further contended that the decision for appointment of the petitioners was taken at government level erroneously, as a consequence thereof, the same was directed to be withdrawn vide order dated 13.01.2000. Thereby, no illegality or irregularity was committed by the authority by passing such order, which has been confirmed by the tribunal. Thus, it is contended that the order impugned passed by the tribunal does not warrant interference by this Court at this stage.

5. This Court heard Ms. Pami Rath, learned counsel for the petitioners and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for the 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 being disposed of finally at the stage of admission.

6. On the basis of the facts, as delineated above, it is to be considered whether the action taken by the State, vide Annexure-15 dated 13.01.2000, that appointment of these two petitioners in the posts of Librarian and Laboratory Assistant, which were approved earlier erroneously, was to be withdrawn after observing due process, is legally tenable.

7. From the aforesaid letter, it is made clear that the petitioners' services were approved and they were allowed to continue in service and, as such, on the basis of assurance given by the Government for regularization of their services, they had withdrawn the earlier O.A. No. 2134 of 1992 filed before the tribunal, vide order dated 27.09.1996, pursuant to Misc. Case No.344 of 1996. As the petitioners withdrew from the said Original Application, their services were approved

and they were allowed to continue as regular employee by opening their GPF account and extending the benefit of GIS, loan facilities, increments from time to time and their service books were also opened, from which it is deemed that they are continuing as regular employees. These two petitioners, being regular employees, but the Government, while deciding the representation of other employees, consciously took decision in relation to the two petitioners by stating that since their appointments were approved earlier erroneously the same are to be withdrawn after observing due process. Thereby, the Government has already taken a decision to withdraw the petitioners from service by observing due process, vide letter dated 13.01.2000 under Annexure-15. Consequentially, the letters dated 27.01.2000, vide Annexures-13 and 14, have been issued by the Director calling upon the petitioners to show cause as to why their services shall not be terminated, which, in the facts and circumstances of this case, is an empty formality and,

as such, a sham exercise of power and more so is a fraud on the power and also is a clever ruse on the part of the authority in order to deprive the petitioners from their livelihood. Therefore, such action of the authority amounts to post decisional hearing, which would not validate the action and, as such, the action itself is violative of principles of natural justice. The reason being, where adverse decision and consequent action involving civil consequence is taken without affording pre-decisional hearing, despite the statutory provision, the same would be arbitrary and mere post decisional hearing to the aggrieved persons would be ineffective and violative of Article 14 of Constitution of India. The post decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. 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. Even if any hearing is given to the petitioners, by issuance of notice of show cause in Annexures-13 and 14, it would not be in compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution.

8. In **K.I. Shephard** (supra), the apex Court held that fair play in actions is a facet of natural justice. The principles of natural justice are also applicable to administrative actions. Even in emergent situations, compliance with at least minimum requirements of natural justice rules, is a condition precedent to taking any action which effects adverse civil consequences, such as, loss of livelihood, post decisional hearing not sufficient in such cases.

9. In **H.L. Trehan** (supra), the apex Court held 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. It is further held that the post-decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. 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. Even if any hearing was given to the employees, that would not be in compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. Such a decision has been taken,

taking into account the judgment rendered by the apex Court in the case of **K.I. Shephard** (supra).

The same view has also been taken by the apex Court in the case of **V.C. Banaras Hindu University v. Shrikant**, (2006) 11 SCC 42.

10. Ms. Pami Rath, learned counsel for the petitioner contended that since Government had given assurance and on that basis the petitioners had withdrawn from the earlier Original Application and, as a consequence thereof, they were given appointment and also granted with all service benefits by opening service books, extending GPF facility, GIS benefits and also the increments from time to time, subsequently the authority cannot pass orders withdrawing their service vide impugned order dated 13.01.2000 under Annexure-15.

11. In **Black's Law Dictionary**, 7th Edn. at page 570 'estoppel' has been defined to mean a bar that prevents one from asserting a claim or right that

contradicts what one has said or done before or what has been legally established as true.

12. The **Law Dictionary** expresses “promissory estoppels” to the following effect:-

“A promise by which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, and which does induce such action or forbearance. Such a promise is binding if injustice can be avoided only by enforcement of the promise.”

13. In **Halsbury’s Laws of England**, Fourth Edition, Vol.16 in Para-1514 at page 1017, the “promissory estoppel” has been defined to the following effect:-

“Promissory estoppel: When one party has, by his words or conduct made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced.”

14. In **Central London Property Trust Ltd. v. High Treas House Ltd.**, (1956) 1 All ER 256, it has

been held that a promise is intended to be binding, intended to be acted upon, and in fact acted upon is binding.

15. In ***Century Spg. And Mfg. Co. Ltd v. Ulhasnagar Municipal Council***, (1970) 1 SCC 582, it has been held that there is no distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.

16. In ***Gujarat State Financial Corporation v. Lotus Hotels***, (1983) 3 SCC 379, it has been held that the principle of “promissory estoppel” would estop a person from backing out of its obligation arising from a solemn promise made by it to the respondent.

17. In ***Ashok Kumar Maheswari v. State of U.P.***, 1988 SCC LSS 592, it has been held that doctrine of “promissory estoppel” has been evolved by the Courts on the principle of equity to avoid injustice.

18. In ***Sharma Transport v. Govt. of A.P.***, AIR 2002 SC 322 : (2002) 2 SCC 188, it has been held that

the Government is equally bound by its promise like a private individual, save where the promise is prohibited by law, or devoid of authority or power of the officer making the promise. The equitable doctrine of promissory estoppel must yield where the equity so requires in the larger public interest.

19. In ***State of Rajasthan v. J.K. Udaipur Udyog Ltd.***, (2004) 7 SCC 673, it has been held that the “promissory estoppel” operates on equity and public interest.

20. In ***A.P. Steel Re-rolling Mill Ltd. v. State of Kerala***, (2007) 2 SCC 725, it has been held that where a beneficent scheme is made by the State, the doctrine of “promissory estoppel” would apply.

21. In ***State of Orissa v. Manglam Timber Products Ltd.***, (2003) 9 Scale 578, it has been held that to attract applicability of promissory estoppel a contract in writing is not a necessary requirement. This

principle is based on premise that no one can take advantage of its own omission or fault.

22. In **B.L. Sreedhar v. K.M. Munireddy**, (2003) 2 SCC 355 (365) it has been held by the apex Court that ‘estoppel’ is based on the maxim “*allegans contrariis non est audiendus*” (a party is not to be heard contrary) and is the spicing of presumption “*juries et de jure*” (absolute, or conclusive or irrebuttable presumption).

23. In **H.R. Basavaraj v. Canara Bank**, (2010) 12 SCC 458, it has been clarified that in general words, ‘estoppel’ is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change his/her position. In such a case, the former shall be stopped from going back on the word given. The principle of estoppels is only applicable in cases where the other party has changed his positions relying upon the representation thereby made.

24. The principle of promissory estoppels has been considered by the apex Court in ***Union of India v. M/s Anglo, Afghan Agencies etc.***, AIR1968 SC 718; ***Chowgule & Company (Hind) Pvt. Ltd. v. Union of India***, AIR 1971 SC 2021; ***M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh***, AIR 1979 SC 621; ***Union of India v. Godfrey Philips India Ltd.***, AIR 1986 SC 806; ***Delhi Cloth & General Mills Ltd. v. Union of India***, AIR 1987SC 2414; and ***Bharat Singh v. State of Haryana***, AIR 1988 SC 2181 and many other subsequent decisions also.

25. In view of the above mentioned propositions of law laid down by the apex Court, the principle of promissory *estoppel* would estop a person from backing out of its obligation arising from a solemn promise made by it to other person. More so, the doctrine of promissory *estoppel* has been evolved by the Courts on the principle of equity to avoid injustice. As such, it operates on equity and public interest. Therefore, this Court is of the considered view that the order

impugned passed by the Government withdrawing the service of the petitioners, is hit by the principle of estoppels.

26. In **Shekhar Ghose** (supra), the apex Court in paragraphs-13, 14, 15, 17 and 23 held as under:-

13. *The order dated 21-11-1996 clearly demonstrates that the Senior Divisional Officer, Kota, without holding an enquiry arrived at a finding that his original post was that of Khalasi in Wagon Repair Shop, Kota and his lien had been cancelled. He was directed to be repatriated. Despite arriving at such a finding, a post-decisional hearing was sought to be afforded to the appellant.*

14. *A post-decisional hearing was not called for as disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was foregone conclusion.*

15. *In K.I. Shephard v. Union of India¹ this Court opined: (SCC p. 449, para 16)*

“It is common experiences that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.”

(See also V.C., Banaras Hindu University v. Shrikant².)

17. *It is not denied or disputed that even when a mistake is sought to be rectified, if by reason thereof, an employee has to suffer civil consequences ordinarily the principles of natural justice are required to be complied*

with. It was so held in Ram Ujarey v. Union of India⁴ in the following terms: (SCC pp. 691-92, para 17).

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23. In this case, the respondents accept that the appellant was entitled to a hearing. All the necessary ingredients of principles of natural justice were thus required to be complied with. The appellant as noticed hereinbefore had not been given adequate opportunity of hearing inasmuch as (i) the hearing was sought to be given was a post decisional one, which is bad in law (ii) a copy of the complaint was not supplied to the appellant at furtherance if not proposed that a mistake was sought to be rectified (iii) no charges were framed (iv) no witness was examined; and (v) no inquiry officer arrived at any finding that the appellant was guilty of the charges leveled against him.”

27. Much emphasis was laid by Mr. S. Jena, learned Standing Counsel for School and Mass Education Department on the contention that since appointments of the petitioners were erroneously approved, therefore, decision has been taken to withdraw such appointments after observing due process. But if such mistakes are rectified and by virtue of the same the petitioners suffered civil consequences, in that case also, principles of natural

justice are required to be complied with. In **Ram Ujarey v. Union of India**, (1999) 1 SCC 685, the apex Court held as under:-

17. There is yet another infirmity in the impugned order of reversion. The appellant had been allowed had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, Could not have been legally reverted two steps below and brought back to the post of khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him.”

28. In **Board of Secondary Education of Assam v. Mohd. Sarifulz Zaman**, (2003) 12 SCC 408, the apex Court held that if a mistake is to be rectified, the same should be done as expeditiously as possible.

In view of such position, the petitioners, having been allowed to serve for more than 10 years, the so called erroneous action of the authority cannot be rectified by a post-decisional hearing by issuing notice of show cause under Annexures-13 and 14, which amounts to gross violation of principles of natural justice.

29. In **Shri Jagannath Temple Managing Committee** (supra), this Court, while considering the case of sudden withdrawal of exemption for payment of income tax under Section 10 (23BBA) of the Income Tax Act, which the petitioner therein was enjoying from 1962, wherein apart from withdrawing exemption, various other notices were issued under Section 142 of the Income Tax Act and letters to the Bankers and others were issued under Sections 201 and 201 (1A) of

the Act and notices under Section 221 (1) of the Act, held in paragraphs-16, 17, 18, 19 and 20 as follows:-

“16. Now, the question is whether such an order withdrawing exemption can be passed without giving the petitioner an opportunity of hearing. Admittedly, the said order was passed changing the petitioner’s status relating to grant of exemption from payment of Income Tax which the petitioner’s status which the petitioner was enjoying since 1962. Therefore, the same order definitely visits the petitioner with civil consequences and affects the petitioner’s right in so far as its income is concerned. The principles of natural justice is, therefore, attracted in the situation. Admittedly, the said order has been passed without giving the petitioner an opportunity of hearing.

17. However, an attempt was made by the Revenue to give the petitioner an opportunity of post-decisional hearing. Such order was passed on 8-12-2006. The question, is whether such post-decisional hearing complies with the requirement of natural justice. In the facts of the instant case, this court is inclined to hold that such post-decisional hearing is nothing but an empty ritual. In the instant case, order dated 12-10-2006 was passed with immediate effect and the authorities did not merely stop by passing the said order, but in order to implement the same, passed several other directions. Therefore, the authorities have virtually taken a final decision to implementing its order. In the affidavit, which has been filed in this proceeding, the authorities have showed the same attitude of enforcing its decision

which was passed on 12-10-2006 by which exemption granted to the petitioner was sought to be withdrawn.

18. *In such a situation, Hon'ble Supreme Court has held that the grant of a post-decisional hearing does not serve any effective purpose. Reference in this connection be made to the decision of the Supreme Court in the case of K.I. Shephard v. Union of India reported in MANU/SC/6643/1987: (1988) ILLJ162SC. And para 16 of the report Hon'ble Supreme Court held that once a decision is taken, it is the common experience that there is a tendency to uphold it and representation does not yield any fruitful purpose.*

19. *Similar principles have been reiterated in the case of Siemens Ltd. V State of Maharashtra reported in MANU/SC/8259/2008:(2006) 12 SCC 33: AIR 2006 SCW 6380 and in paragraph 9, learned Judges after noting the decision in the case of K.I. Shephard V. Union of India MANU/SC/0643/1987: (1988) ILLJ162SC and also the decision of the supreme court in the case of V.C. Banaras Hindu University v, Shrikant reported in MANU/SC/8170/2006 : AIR 2006SC2304 held that a post-decisional hearing in a situation where authorities have made up their mind is illusory, Similar principles have been reiterated in the case of Shekar Ghosh v. Union of India reported in MANU/SC/8616/2006: (2007) 1SCC331.*

20. *In the instant case, this Court finds that the post-decisional hearing which has been sought to be given by the Revenue is more or less in the form of an idle ceremony, since the authorities had already issued the impugned order withdrawing*

exemption, coupled with any attempt to implement the same immediately. This makes it very clear that they determined to implement the order of withdrawing the exemption. Therefore, the impugned order having been passed without giving the petitioner an opportunity of hearing, is violative of the basic tenets of natural justice and cannot be sustained and the same is liable to be quashed.”

30. In view of the principles of law laid down by the apex Court as well as this Court, as referred to above, after passing of the order dated 13.01.2000 in Annexure-15, issuance of consequential notices to show cause by the Director on 27.01.2000 under Annexures-13 and 14 for post decisional hearing, are in gross violation of principles of natural justice and, therefore, the same cannot sustain in the eye of law.

31. Ms. Pami Rath, learned counsel for the petitioners specifically urged before this Court that though this fact was pleaded at paragraph-6 of page-6 of the Original Application, but the same was not considered by the tribunal while passing the order impugned. Thereby, the said order of the tribunal is

without application of mind, as it has not touched the points which had been urged before it by way of pleadings. It is further contended that though the matter was heard on 27.11.2011, the judgment was delivered on 24.02.2011 and vide memo no.3109 dated 08.04.2011 the same was stated to have been communicated to the parties, but actually the same was not communicated to the petitioners. While making query, the petitioners came to know the said fact and only on 09.11.2012 the petitioners received the copy of the judgment. As a consequence thereof, the petitioners approached this Court by filing the present writ petition. Thereby, the action of the tribunal is in gross violation of Rule-21 of the Orissa Administrative Tribunal Procedure Rules, 1986. Since the tribunal has already been abolished, this Court is not inclined to deal with the said issue. Be that as it may, the order of the tribunal passed on 24.02.2011, which is impugned under Annexure-16 to the writ petition, having not delved into the facts pleaded by the petitioners in their

original application and also not dealt with the arguments advanced by learned counsel for the petitioners, this Court is of the considered view that the order impugned cannot sustain in the eye of law and the same is liable to be quashed.

32. In view of the facts and propositions of law, as discussed above, this Court is of the considered view that the order dated 13.01.2000 in Annexure-15 and the post-decisional action taken for withdrawal of appointments of the petitioners by observing due process and consequential notices of show cause for termination of their services issued under Annexures-13 and 14 dated 27.01.2000, as well as the order dated 24.02.2011 passed by the tribunal in O.A. No. 516 of 2000 under Annexure-16 cannot sustain in the eye of law. Thereby, the same are liable to be quashed and are hereby quashed. Since by virtue of the interim order status quo passed by this Court on 14.11.2012, the petitioners are continuing in service, they are deemed to be continuing in service on regular basis and thus

they are entitled to get all consequential service and financial benefits, as due and admissible to them in accordance with law. The opposite parties are directed to extend such benefits to the petitioners within a period of three months from the date of communication of this judgment.

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

SAVITRI RATHO, J.

I agree. सत्यमेव जयते

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DR. B.R. SARANGI,
JUDGE

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 30th March, 2022, Ashok/GDS