

ORISSA HIGH COURT: CUTTACK

W.P.(C) No.21134 OF 2016

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

Ajaya Kumar Bevera

.....

Petitioner

-Versus-

State of Orissa & Others

..... **Opp. Parties**

For Petitioner : M/s.S.Das, R.P.Dalai,
K.Mohanty, S.Jena &
S.D.Routray.

For Opp. Parties : M/s. S.Rath, A.S.C.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE B.P.SATAPATHY**

DATE OF HEARING & DATE OF JUDGMENT ON:: 10.11.2022

B.P.SATAPATHY, J. The Present Writ Petition has been filed challenging the order dated 06.10.2016 passed by the learned Odisha Administrative Tribunal, Cuttack Bench (in short 'Tribunal') in O.A No.3737(C) of 2013 dismissing the same and confirming the disengagement order passed by the authority.

2. The factual matrix giving rise to the present case is that the Petitioner in terms of the agreement executed in between the Petitioner and Collector, Rayagada, Opposite Party No.2 on 09.07.2008 under Annexure-1-Series was duly engaged as a Physical Education Teacher (PET) vide order dated 22.07.2008. Pursuant to the said order passed on 22.07.2008, the Petitioner was posted to act as a PET in Government Girls' High School, Gudari. While continuing as such and in consideration of the complaint made by the students as well as some teachers of the School, an enquiry was made by the

Opposite Party No.3. After conducting such enquiry, the Opposite Party No.3 when recommended for disengagement of the Petitioner, the Petitioner was straight away disengaged from his service vide order dated 07.04.2012 of the Opposite Party No.2 under Annexure-3. Since the Petitioner was continuing as a P.E.T in terms of the order issued on 22.07.2008, the Petitioner when was disengaged straight away without compliance of the principle of natural justice, he challenged the said order and approached learned Tribunal in O.A No.3737(C) /2013. Learned Tribunal while dealing with the matter was not satisfied with the plea taken by the Petitioner regarding non-compliance of the principle of natural justice and held the said disengagement as legal and justified. While holding so, learned Tribunal vide order dated 06.10.2016, the O.A by confirming the order of disengagement passed on 7.4.2012 under Annexure-3. Hence, the present Writ Petition.

3. It is the main contention of the learned counsel for the Petitioner that since the Petitioner was engaged as a P.E.T in terms of the order passed on 22.07.2008 under Annexure-1, the Petitioner should not have been disengaged from his service vide order dated 07.04.2012 under Annexure-3 without providing him reasonable opportunity of hearing. But the Opposite Party No.2 basing on the enquiry report submitted by the Opposite Party No.3 straight away disengaged him vide order dated 07.04.2012.

3.1. The Petitioner was never given an opportunity to submit his reply either to the allegation or to the finding of the enquiry officer by the Opposite Party No.2 prior to taking the extreme step of disengaging him from service vide order dated 07.04.2012 under Annexure-3. Since prior to his disengagement vide order dated 07.04.2012, the Petitioner was never given an opportunity of hearing that amounts to violation of the principle of natural

justice. Therefore, in view of the decision of this Court passed in the case of **Pravat Kumar Mishra vs. State of Orissa and Others** decided on 22.09.2015 in W.P.(C) No.7515 of 2015, the order of termination passed against the Petitioner is required to be declared as illegal. But learned Tribunal without proper appreciation of the grounds taken in the Original Application vis-à-vis for non-compliance of the principle of natural justice and the decisions rendered in the case of **Pravat Kumar Mishra** as cited (supra), dismissed the Original Application by illegally holding that non-service of show cause notice will not amounts to violation of Article -311 of the Constitution of India. Learned Tribunal in the alternate held that in view of the enquiry conducted by the Opposite Party No.3 and taking into account the nature of allegation made against the Petitioner vide Annexure-2-Series by the Students and Teachers of the School, the order of disengagement has been rightly passed by Opposite

Party No.2. The said order of the learned Tribunal is therefore not sustainable in the eye of law.

4. Mr. S.Rath, learned Additional Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit. It is the stand of the Opposite Parties that basing on the allegation made against the Petitioner by the students and teachers of the School vide Annexure-2-Series, Opposite Party No.3 proceeded to the School on dtd. 23.03.2012 and enquired into the activities of the Petitioner. After such enquiry, Opposite Party No.3 in his report dated 05.04.2012 under Annexure-A/3 clearly reported that the Petitioner keeps illicit relationship with grown up girls students of the school. The said Opposite Party also found that the Petitioner is involved in all sorts of mischievous activities and he very often entered the girl's hostel nearby the quarter allotted to him to gossip with

selected girls and tries to trap them into his nuisance activities.

4.1. It is also ascertained during the enquiry that the Petitioner has succeeded in establishing illicit relationship with some grown up girls' students. It is also found that the Petitioner made sexual harassment to the girls' boarders and polluted the educational atmosphere of the School. Accordingly, in view of the nature of allegation made against the Petitioner and the confirmation of the same by the authority during the enquiry and taking into account the status of the Petitioner as a Teacher of the School, the Petitioner was rightly disengaged from his service and no show cause was required to be issued to the Petitioner prior to passing of the order of disengagement.

4.2. In view of the seriousness of the allegations and the conduct of the Petitioner in spite of being a teacher of the High School, even if the Petitioner would have been provided with an opportunity of

hearing, no contrary materials could have been produced by the Petitioner in disproving the allegation. However, in view of the gravity, nature and seriousness of the allegation, Opposite Party No.2 basing on the report of the Opposite Party No.3 rightly disengaged the Petitioner. Though similar stand with regard to non-compliance of the principle of natural justice vis-à-vis Article-311(2) of the Constitution of India was raised by the Petitioner before the learned Tribunal, but learned Tribunal taking into consideration the conditions of the agreement and the enquiry made by the Opposite Party No.3 as well as the decision in the case of **Purusottam Lal Dhingra-Vrs-Union of India**, reported in **AIR 1958 SC-36** rightly held that non-service of show cause notice will not amount to violation of Article-311(2) of the Constitution of India.

4.3. It is contended by the learned State Counsel that since learned Tribunal after due appreciation of the materials available on record and

taking into account the submissions made by the learned counsel appearing for the Parties, while dismissing the Original Application confirmed the order of disengagement passed against the Petitioner, this Court in exercise of its power under Article – 227 of the Constitution of India is not required to substitute the finding so arrived at by the learned Tribunal as the power of Superintendence under Article-227 of the Constitution of India is very limited and the said power is to be exercised in cases of exceptional nature and where it is found that gross injustice has been done.

4.4. Mr.S. Rath in support of the aforesaid submission with regard to power of this Court under Article-227 of the Constitution of India relies on the following decisions:-

(i) AIR 1979 SC-1 (Chandrasekhar Singh and Others v. Siya Ram Singh and Others).

(ii) AIR 1984 SC-38 (Mohd. Yunus v. Mohd. Mustaqim and others).

(iii) AIR 1953 SC-58 (D.N. Banerji v. P.R. Mukherjee and Others)

(iv) AIR 1998 SC-1990 (Mrs. Rena Drego v. Lalchand Soni, Etc.,)

(v) AIR 2000 SC-931 (Mohan Amba Prasad Agnihotri and others v. Bhaskar Balwant Aher (Dead) through L.Rs)

5. The Apex Court in Para-11 of the judgment in the case of **Chandrasekhar Singh (supra)** held as follows:-



“11. The only other question that remains to be considered is whether an order under S. 146 (1-B) can be interfered with by the High Court in the exercise of its powers under Art. 227 of the Constitution. It is admitted that the powers conferred on the High Court under Art. 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore, the powers of the High Court under Art. 227 of the Constitution can be invoked in spite of the restrictions placed under S. 146 (1-D) of the Criminal Procedure Code. But the scope of interference by the High Court under Art. 227 is restricted. This Court has repeatedly held that "the power of superintendence conferred by Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors vide 1954 SCR 565 : (AIR 1954 SC 215) (Waryam Singh v. Amar Nath). In a later decision, 1958 SCR 1240 : (AIR 1958 SC 398) (Nagendra Nath Bora v. Commr. of Hills Division), the view was reiterated and it was held that the powers of judicial interference under Art. 227 of the Constitution are not greater than the power under Art. 226 of the Constitution, and that under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. In a recent decision AIR 1975 SC 1297 (Babhutmal Raichand v. Laxmibai) this Court reiterated the view stated in the earlier decisions referred to and held that the power of superintendence under Art. 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the Court of appeal and that the High Court cannot in exercise of its jurisdiction under Art. 227 convert itself into a court of appeal.

6. The Apex Court in Para-7 of the judgment in the case of **Mohd. Yunus (supra)** held as follows:-

“7. The supervisory Jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision”.

7. The Apex Court in Para-5 of the judgment in the case of **D.N. Banerji (supra)** held as follows:-

“5. Whether on the facts of a particular case the dismissal of an employee was wrongful or justified is a question primarily for the Tribunal to decide, and here the Tribunal held that the dismissals were clear cases of victimisation and hence wrongful. Unless there was any grave miscarriage of justice of flagrant violation of law calling for intervention, it is not for the High Courts under Arts. 226 and 227 of the Constitution to interfere”.

8. The Apex Court in Para-4 of the judgment in the case of **Mrs. Rena Drego (supra)** held as follows:-

“4. According to us, the High Court has traversed far beyond the limit of its supervisory jurisdiction under Article 227 of the Constitution when the learned single Judge reversed the decree of eviction which was based on findings of facts arrived at by the fact-finding authority upon the evidence on record. It would have been well for the High Court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court to confine to the scrutiny of records and proceedings of the lower tribunal. By relying on fresh materials which were not before the tribunal, the High Court should not have disturbed findings of facts in exercise of such supervisory jurisdiction. It is now well nigh settled that power under Article 227 is one of judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court, in Waryam Singh v. Amarnath, AIR 1954 SC 215, has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors."(Emphasis supplied.).

9. The Apex Court in Para-5 of the judgment in the case of **Mohan Amba Prasad Agnihotri (supra)** held as follows:-

“5. On the first submission of Mr. Lalit, it will suffice to observe that it is settled law that the jurisdiction of the High Court under Article 227 is not appellate but supervisory. It cannot interfere with a finding of fact recorded by lower Court/tribunal unless

there is no evidence to support the finding or the finding is perverse”.

10. Learned Addl. Standing Counsel for the State also submitted that in view of the seriousness and nature of allegation made against the Petitioner, no illegality has been committed by the Opposite Party No.2 in disengaging the Petitioner without affording him reasonable opportunity of hearing. It is contended that compliance of principle of natural justice is not a rule of law and there is no straight jacket formula for its application in each and every cases. In support of the said submission, Mr. Rath, learned Addl. Standing Counsel for the State relied on the following decisions:-

(i) AIR 1981 SC-136 (S.K.Kapoor v. Jagmohan and Others).

(ii) AIR 1996 SC-1669 (State Bank of Patiala and Others v. S.K. Sharma).

11. Hon'ble Apex Court in Para-24 of the judgment in the case of **S.K.Kapoor (supra)** held as follows:-

“24. In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied Justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal”.

12. The Apex Court in Para-32 of the judgment in the case of **State Bank of Patiala (supra)** held as follows:-

“32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry

held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) here in below is only another way of looking at the same aspect as is dealt with herein and not SC1684 a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach

adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or aity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

13. We have heard Mr.S.D.Routray, learned counsel appearing for the Petitioner and Mr. S.Rath,

learned Addl. Standing Counsel for the State-Opposite Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner was appointed as a PET vide order dated 22.07.2008 under Annexure-1-Series and posted to work as such in Government Girls High School, Gudari. As per Clause-9 of the agreement, executed in between the Petitioner and Opposite Party No.2 on 09.07.2008, the Petitioner agreed to be disengaged without any notice on the ground of misconduct even during the operation of the agreement. The Petitioner has also executed an undertaking on 9.7.2008 in accepting such terms and conditions of the agreement available under Annexure-1-Series.

14. This Court also finds that the allegations made against the Petitioner by the students and lady teachers of the school vide Annexure-2-Series are very serious in nature and in view of that the Petitioner being a Teacher by profession, is not entitled to

continue on the face of such allegations. Opposite Party No.3 while conducting an enquiry after receipt of such complaint in his report under Annexure-A/3 also found the allegations against the Petitioner to be true and correct and reported that the continuance of the Petitioner will imperil the prestige of the institution as well as the district and it may create law and order situation in future. The Opposite Party No.3 also observed that the Petitioner is a disturbing element and needs to be eliminated in the interest of the institution and innocent tribal girls.

15. Therefore, the stand taken by the learned counsel appearing for the Petitioner with regard to non-compliance of the principle of natural justice vis-à-vis non-compliance of Article-311(2) of the Constitution of India will no way help the Petitioner in overcoming the allegations made against him vide Annexure-2-Series. Learned Tribunal after going through the materials available on record and the decisions of the Hon'ble

Apex Court in the case of **Purusottam Lal Dhingra** rightly declined to interfere with the order of the disengagement. Since the scope of this Court while exercising power under Article- 227 of the Constitution of India is very limited and placing reliance on the decisions of the Hon'ble Apex Court relied on by the learned State Counsel, this Court does not find any illegality or irregularity in the order passed by the learned Tribunal, which is impugned in the present Writ Petition. The decision relied on by the learned counsel for the Petitioner in the case of **Pravat Kumar Mishra** as per the considered view of this Court is not applicable to the facts of the present case. Moreover, in view of the decisions relied on by the learned Addl. Standing Counsel for the State, this Court is of the opinion that Petitioner has been rightly disengaged from his service and learned Tribunal has rightly upheld the same while passing the impugned order.

Hence, this Court is not inclined to entertain the Writ
Petition and dismiss the same accordingly.

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B.P.SATAPATHY,
JUDGE

DR. B.R.SARANGI, J. I agree.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 10th of November, 2022, Subrat (Sr. Steno) ★

संस्थानिक न्यायो

ORISSA