

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OAC) No.2712 of 2018

Nimain Charan Sahoo **Petitioner**

-versus-

State of Odisha & Ors. **Opposite Parties**

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
28.10.2022**

Order No

02. I.A. No.1174 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. This is an application for modification of order dtd.20.09.2022.
3. Considering the grounds taken in I.A., the order dtd.20.09.2022 is recalled.
4. Accordingly, the I.A. is disposed of.

**(Biraja Prasanna Satapathy)
Judge**

03. W.P.(C) (OAC) No.2712 of 2018

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Chandan Kumar Sahoo, learned counsel on behalf of Mr. Prasanna Kumar Sahoo, learned counsel for the Petitioner and Mr. R.N. Mishra, learned AGA appearing for the Opp. Parties.
3. The Counter affidavit filed in Court be kept on record.

4. The present writ Petition has been filed with the following prayer:-

“i) To quash the office order No. 6170 dated 27.10.2018 under Annexure-8 and relieve order bearing No.5204 dated 27.10.2018 under Annexure-9.

ii) To declare the consequential action of respondents as per office order under Annexure-8 & 9 as illegal and non-est in the eye of law.

iii) And pass such other order(s)/direction(s) as may be deemed fit and proper for the interest of justice and allow the application with cost.”

5. It is submitted that the Petitioner vide office order dtd.28.02.2005 under Annexure-4 while continuing as Work Sarkar in the Wages Establishment, was appointed as a Junior Clerk on promotion basis in the scale of pay of Rs.3.050/- - Rs.4,590/- with usual D.A. and other allowances.

6. It is submitted that the Petitioner basing on said order was not only appointed as Junior Clerk, but also he has given the scale of pay as due and admissible and other financial benefits all through. It is submitted that while so continuing and without issuing any show-cause and without providing him any opportunity of hearing the order passed on 28.02.2005 was recalled vide the impugned Office order dtd.27.10.2018 under Annexure-8. It is also submitted that basing on the said order the Petitioner was reverted to his former post of Work Sarkar vide order dtd.27.10.2018 of the O.P. No. 4 under Annexure-9.

7. Mr. Sahoo, learned counsel for the Petitioner submitted that learned Tribunal while issuing notice of the matter vide order dtd.20.11.2018 stayed the operation of the order dtd.27.10.2018 under Annexure-9 and order dtd.27.10.2018 under Annexure-8 and the Petitioner continued as Junior Clerk as before. But it is

submitted that since the impugned order at Annexure-9 has been passed in complete violation to the principle of natural justice. The said order needs interference.

8. Mr. Sahoo in support of his aforesaid submission relied on a decision of this Court passed on 06.08.2021 in W.P.(C)(OAC) No. 913 of 2017. This Court while relying on various decisions of the Hon'ble Apex Court on the question of non-compliance of the principle of natural justice, held as follows in Para 7 to 13 and 16:-

“7. The soul of natural justice is ‘fair play in action’ In HK (An Infant) in re, 1967 1 All ER 226 (DC), Lord Parker, CJ, preferred to describe natural justice as ‘a duty to act fairly’.

In Fairmount Investments Ltd. v. Secy of State for Environment, 1976 2 All ER 865 (HL), Lord Russel of Killowen somewhat picturesquely described natural justice as ‘a fair crack of the whip’

In R. v. Secy. Of State for Home Affairs, ex p. Hosenball, Geoffrey Lane, LJ, 1977 3 All ER 452 (DC & CA), preferred the homely phrase ‘common fairness’ in defining natural justice.

8. A.K. Kraipak and others v. Union of India, AIR 1970 SC 150= (1969) 2 SCC 262, is a landmark in the growth of this doctrine. Speaking for the Constitution Bench, Hegde, J. observed thus:

“If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasijudicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have far reaching effect than a decision in a quasijudicial enquiry”.

In Maneka Gandhi v. Union of India, AIR 1978 SC 597 = (1978) 1 SCC 248, law has done further blooming of this concept. // 4 // Page 4 of 6 This decision has established beyond doubt that even in an administrative proceeding involving civil consequences doctrine of natural justice must be held to be applicable.

9. In Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818, the meaning of ‘natural justice’ came for consideration before the apex

Court and the apex Court observed as follows:- “The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self evident and unarguable truth”. “Natural justice” by Paul Jackson, 2nd Ed., page-1. In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the administration of justice.”

10. In Basudeo Tiwary v Sido Kanhu University and others (1998) 8 SCC 194, the apex Court held that natural justice is an antithesis of arbitrariness. It, therefore, follows that audi alteram partem, which is facet of natural justice is a requirement of Art.14.

11. In Nagarjuna Construction Company Limited v. Government of Andhra Pradesh, (2008) 16 SCC 276, the apex Court held as follows: “The rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice. Thus, whenever a man’s rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice. It is important to note in this context the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration.”

12. The apex Court in Uma Nath Panday and others v State of U.P. and others, AIR 2009 SC 2375, held that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

13. Natural justice, another name of which is common sense justice, is the name of those principles which constitute the minimum requirement of justice and without adherence to which justice would be a travesty. Natural justice accordingly stands for that “fundamental quality of fairness which being adopted, justice not only be done but also appears to be done”.

16. Therefore, in view of the principles of law laid down by the apex Court, as referred to above, this Court is of the considered view that the impugned order of reversion in Annexure-3 dated 10.04.2017, so far as it relates to the petitioner, cannot sustain in the eye of law and the same is liable to be quashed and hereby quashed. The matter is

remitted back to the authority concerned to reconsider the same and pass appropriate order by affording opportunity of hearing to the petitioner in compliance of the principles of natural justice.”

9. Mr. Mishra, learned AGA made his submission basing on the stand taken in the counter affidavit. It is submitted that since the Petitioner was given promotion to the post of Junior Clerk nor in accordance with the prevalent Rule and without any authority, by the order of the O.P. No. 3, Petitioner has been rightly reverted to his former post and no illegality has been committed by the Opp. Parties.

10. Heard learned counsel for the Parties. This Court after going through the materials available on record finds that the Petitioner though was duly promoted to the post of Junior Clerk vide order dtd.28.02.2005, but without giving any show-cause and without affording any opportunity of hearing the impugned order of reversion was passed on 27.10.2018 under Annexure-8 and the consequential order was passed by the O.P. No. 4 on 27.10.2018 under Annexure-9.

11. Since this Court finds that prior to issuance of such order of reversion, which is of civil consequence, no opportunity of hearing has been given, this Court is inclined to set aside the said order dtd. 27.10.2018 under Annexure-8 and the consequential order dtd. 27.10.2018 under Annexure-9.

12. However, while quashing the impugned orders, since it is submitted that by virtue of the interim order the Petitioner is continuing as per the order issued on 28.02.2005 and he has completed more than 17 years in the said capacity, it will be futile to remit the matter to the authority for taking a fresh decision by

giving opportunity of hearing to the Petitioner. Necessary follow-up action be taken to restore the order dated 28.02.2005 within a period of 3(Three) months from the date of receipt of the order.

13. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Subrat

