

DL-72

16.08.2023
Court No.5
(AD)

WP.ST 106 of 2013

**The State of West Bengal & Ors.
Vs.
Basudev Dutta**

*Mr. Tapan Kumr Mukherjee,
Ld. Sr. Advocate & Ld. AGP
Mr. Pinaki Dhole
Mr. Somnath Naskar
... for the petitioners.*

*Mr. Prabir Adhya
Ms. Madhumanti Chakraborty
... for the respondent.*

The writ petition is directed against an order dated August 28, 2012 passed in OA-331 of 2011 by the West Bengal Administrative Tribunal.

By the impugned order, the decision of dismissal from service of the private respondent was set aside by the Tribunal on the ground of breach of principle of natural justice.

The respondent was given an appointment provisionally as Grade-III Technical Assistant of Group- 'A' of West Bengal Subordinate Health Services (N.M.T.P.) Cadre by a writing dated February 21, 1985. The appointment granted was subject to satisfactory reports of the police verification and medical examination.

The authorities received information that the private respondent was a Bangladeshi national.

The post to which the private respondent was

appointed provisionally was reserved for Indian national. Authorities thereafter issued a show-cause notice dated August 23, 2010. The private respondent replied thereto by a writing dated September 9, 2010. The private respondent claimed that, the private respondent was of Indian origin. In his reply, the private respondent stated he continued his studies upto Senior Secondary Course at Daka, Bangladesh. What is claimed to be a migration certificate is an affidavit affirmed before a Magistrate.

The claim of the private respondent that, he was an Indian citizen was disbelieved and by a writing dated February 11, 2011, the authorities terminated his service.

The termination of the service was assailed by the private respondent before the Tribunal in OA No.331 of 2011.

By the impugned order, the Tribunal set aside the order of termination dated February 11, 2011 on the ground that, the authorities did not adhere to the principles of natural justice at the time of passing the order of termination.

With respect, we are unable to agree with the view taken by the Tribunal in the facts and circumstances of the present case.

The private respondent was issued a show-cause notice dated August 23, 2010. The allegation that the private respondent was not an Indian citizen was made

in such memorandum dated August 23, 2010. The private respondent by a writing dated September 9, 2010 replied to the show-cause notice.

This action of the authorities in issuing a show-cause notice and inviting a reply therefrom and the respondent availing of such opportunity and responding thereto in writing, in our view, is in adherence with the principles of natural justice.

Principles of natural justice should not be read to mean that, in every context or situation a personal hearing need be given to the delinquent. A show-cause notice and a reply thereto, and, in fact, show-cause notice coupled with an opportunity to submit a reply, in the given facts and circumstances of a case may be sufficient compliance of the principles of natural justice.

In the facts and circumstances of the present case, we are, therefore, of the view that, there was adherence to the principles of natural justice prior to the passing of the order of dismissal dated February 11, 2011.

In such circumstances, the impugned order of the Tribunal dated August 28, 2012 is set aside.

WP.ST 106 of 2013 is disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

