



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.115 OF 2015**

Mr Vilas Kashinath Parab,
Major of age,
resident of 'Dangui Colony'
Alto Dhuler,
Near Gauns Hospital,
Mapusa Goa.

... Petitioner

Versus

1. State of Goa,
Through the Secretary (Education),
Government of Goa,
Secretariat Complex,
Porvorim, Bardez Goa.
 2. The Director,
Directorate of Technical Education,
Government of Goa,
With his office at Porvorim,
Bardez Goa.
 3. The Goa College of Architecture,
Government of Goa,
represented by its Principal
with its office at
'Dr. T. B. Cunha Educational Complex',
Altinho, Panaji Goa.
- ... Respondents

Mr Terence Sequeira, Advocate for the Petitioner.

Ms Maria Correia, Additional Government Advocate for the respondents.

**CORAM: - M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATED: - 6th JANUARY 2025

JUDGMENT (Per Nivedita P. Mehta, J.)

1. The challenge in this petition is to the order of dismissal dated 10/07/2014 issued by respondent No. 3 i.e. Goa College of Architecture, Government of Goa.

2. The petitioner was appointed as a Model Room Assistant vide order dated 20/07/1988 on probation for a period of two years. The petitioner's appointment was based on the selection made by a duly constituted selection committee which observed that the petitioner fulfilled all essential qualifications and that the documents produced were duly verified and confirmed, including the birth certificate mentioning the date of birth as 12/04/1958. Accordingly, the date of birth was entered in the service record as 12/04/1958. The petitioner's service was regularised in 1999.

3. One Mr. Nashiket Parab filed a private complaint against the petitioner in the Court of Judicial Magistrate First Class at Mapusa, alleging that the petitioner had falsely registered his date of birth as 12/04/1958 and that he was actually born on 12/04/1951. As per the Government Rules, a candidate applying for the Government post has to be below the age of 30 years to be eligible for applying for the post. The petitioner, when applied for the post was overage and thus forged the birth certificate.

4. The petitioner was served with a show cause notice on 19/06/2014 by respondent No. 3 referring to the complaint made by Mr. Nashiket Parab alleging that the petitioner had secured the Government job by forging the birth certificate and has committed a serious cognizable offence of forgery. It is further stated in the show cause notice that the petitioner had submitted a birth certificate issued on 30/10/1986 by the Registrar of Births and Deaths, Revora, Nadora, indicating his date of birth as 12/04/1958 whereas the birth certificate from the Civil Registrar-cum-Sub Registrar of Bardez, recorded the date of birth of the petitioner -Vilas Kashinath Parab as 12/04/1951. The Petitioner was called upon to show cause as to why action should not be initiated against him to terminate his appointment as per Clause -5 of Memorandum No. Arch/Vacancy/88/5744 dated 31/03/1988. The petitioner submitted his reply to the said show cause notice on 30/06/2014 denying the allegations made against him and contending that the correct date of birth is 12/04/1958 as evidenced by the birth certificate produced by him.

5. Respondent No. 3 vide order dated 10/07/2014 dismissed the petitioner from service contending that the petitioner has not given any satisfactory explanation to the show cause notice except denial of allegations made against him. Hence this petition.

6. Heard Mr. T. Sequeira, learned counsel for the petitioner and Ms. Maria Correia, learned Additional Government Advocate for the Respondents.

7. Learned counsel for the petitioner submits that the

order of dismissal is illegal and arbitrary and the same has been issued in gross violation of principles of natural justice. The learned counsel further submits that a pretence was made by the Respondent No. 3 of issuing a show cause notice to the petitioner on 19/06/2014 calling upon him to show cause why action should not be initiated against him to terminate his services and it was apparent from the order of dismissal that the Respondent No.3 had already decided to terminate the services of petitioner even before the show cause notice was issued. The learned counsel contended that the order of dismissal does not record any reasons except stating that the petitioner has not satisfactorily refuted the charges levelled against him. Furthermore, the show cause notice did not specify in respect of which findings arrived at by respondent No. 3, the petitioner was required to address and on what grounds he was being asked to show cause regarding the termination of his service. The learned counsel submits that the order of dismissal was stigmatic, accusing the petitioner of forgery and falsification of documents, and the same could not have been issued without conducting an inquiry as contemplated under the Central Civil Services (Classification, Control and Appeal) Rules (hereafter referred to as the 'Rules' for short) for the imposition of a major penalty.

8. The learned counsel submits that the accusation made against the petitioner by Mr. Nashiket Parab was under investigation before the Judicial Magistrate First Class at Mapusa and vide judgment dated 18/12/2018, the Judicial Magistrate First Class at Mapusa acquitted the petitioner. The learned counsel Mr. T. Sequeira submitted that respondent No.3 while terminating the petitioner's service vide order dated 10/07/2014 has categorically noted the

registration of the FIR and the order of this Court upholding the issuance of process against the petitioner by the Court of Judicial Magistrate First Class at Mapusa. He submits that during the pendency of the present petition, the petitioner was acquitted by the J.M.F.C. and that the order has attained finality. Therefore, respondent No.3 cannot now claim that the proceedings before the JMFC have no material effect on the instant case.

9. The learned counsel submits that the petitioner could not have been summarily dismissed as it is in a patent violation of Article 311 of the Constitution of India and also as per the Goa University statute applicable to the affiliated colleges. He submits that respondent No. 3 being a Government College, the petitioner's service conditions were governed under the Central Civil Services (Classification, Control and Appeal) Rules. Hence, in the absence of departmental enquiry or any fact-finding enquiry, the opinions, apprehension, and assumptions of respondent No. 3 are mere surmises and conjunctures without any legal basis. Therefore, the order of dismissal should be quashed and set aside and the petitioner be granted the reliefs as prayed for in the petition.

10. The learned counsel for the petitioner relied on (i) *Sachin Kumar Vs. Union of India*, reported in 2023(4) ALLMR 245; (ii) *Oryx Fisheries Private Limited Vs. Union Of India and others* reported in (2010) 13 SCC 427; and (iii) *Sandeep Kumar Vs. GB Pant Institute of Engineering and Technology Ghurdauri and others*, passed in SLP (C) No.(s). 8788-8789 of 2023, in support of his submissions.

11. In contrast, Ms Maria Correia, learned Additional Government Advocate for respondent No. 3 submits that the petitioner at the time of joining the service, had submitted a birth certificate issued on 30/10/1986 by the Registrar of Birth and Deaths, Nadora, indicating his date of birth as 12/04/1958. The learned counsel further submits that the Institution received a complaint dated 24/03/2014 from one Mr. Nashiket Parab who alleged that the petitioner had secured the Government job by forging the birth certificate and upon inquiry, it was noted that as per the birth certificate records of the Civil Registrar- cum-Sub Registrar, Bardez, Goa, dated 30/04/1951 under registration No. 1222, the date of birth of Vilas Caxinata Porobo is recorded as 12/04/1951. Additionally, the records of G.S. Amonkar Vidya Mandir School, formerly known as New Goa High School, Mapusa, Bardez Goa, also recorded the petitioner's date of birth as 12/04/1951.

12. She further submits that the age limit for applying for the post of Model Room Assistant is 35 years. Therefore, if the petitioner's age is calculated from the date of birth 30/04/1951, he would have been 37 years old at the time of applying for the post of Model Room Assistant and thus ineligible. The learned counsel contended that the petitioner's school leaving certificate issued by G.S. Amonkar Vidya Mandir records that the petitioner was admitted for the XIth Std on 01/06/1972 and left the school on 31/05/1974 as pleaded by the petitioner in paragraph No. 3 of the petition. The learned counsel contended that the students in XIth Std are typically in the age group of 16-17 years. The petitioner's age, if computed from 12/04/1958, according to the birth certificate produced by the petitioner at the time of joining service, he would have been 14 years

old at the time of his admission to the XIth Std and if his age is computed from the date 12/04/1951 then the petitioner's age at the time of admission to the XIth Std would have been 21 years old. Hence it is impossible that the petitioner was 14 years old at the time of his admission to the XIth Std and on the said material, leading to a bonafide assumption regarding the petitioner's unworthiness.

13. The learned counsel submits that in the factual circumstances, it appears that the petitioner fabricated the birth certificate to meet the age requirement of being under 35 years at the time of applying for the post of Model Room Assistant. According to her, continuing the petitioner in service would be embarrassing for the Institution of the Goa College of Architecture and detrimental to its discipline. The learned counsel asserted that the petitioner's acquittal in the criminal proceedings has no material effect on the present case and that the petitioner's dismissal is just and proper. Respondent No.3 no longer has the confidence to retain the petitioner in service. Therefore, she submits that the petitioner has not made out a case for interference with the order of dismissal.

14. Having heard the learned counsel for the parties, we have arrived at the following conclusions.

15. Prior to the order of dismissal, the show cause notice dated 19/06/2014 was issued referring to a complaint made by Mr Nashiket Parab alleging that the petitioner had secured a Government job by forging/falsification his birth certificate. The show cause notice also refers to the inspection of the personal file of the petitioner maintained by the Institution having a birth certificate

issued on 30/10/1986 and recording the date of birth as 12/04/1958. It also refers to the birth certificate issued by the Civil Registrar - Cum -Sub Registrar Bardez of Vilas Caxinata Porobo which records the date of birth as 12/04/1951. The record of G.S. Amonkar Vidya Mandir indicates the date of birth as 12/04/1951. The show cause notice observes that there is a serious discrepancy in the date of birth submitted by the petitioner and the two other documents. The show cause notice was replied to by the petitioner vide reply dated 30/06/2014 stating that besides the birth certificate submitted to the College about his birth, there is no other certificate. He maintained that the date of birth i.e. 12/04/1958 mentioned in his birth certificate is the correct date.

16. Respondent No. 3 issued the order of dismissal within a span of 10 days stating therein that the reply given by the petitioner was unsatisfactory and referring to the findings of this Court and the Subordinate Court. The order of dismissal is reproduced as under: -

“ORDER

Whereas, by a communication under no. DTE/Est/1-34/ Misc-C.C./2011-12/55 dated 17/06/2014, the Director, Directorate of Technical Education conveyed to the undersigned the approval of the Government of Goa for the immediate removal of Mr. Vilas Kashinath Parab, Model Room Assistant, Goa College of Architecture from the Govt. service;
And Whereas, in pursuance of the aforesaid approval by the Government of Goa, the undersigned issued a Show Cause Notice under no.-Arch/A/PF/VKP/20 dated 19/06/2014 to Mr. Vilas K. Parab, seeking his explanation as to why his appointment should not be terminated in view

of the registration of F.I.R. and the Order of the Hon'ble High Court upholding the order of the issue of the process against him by the Court of Judicial Magistrate First Class at Mapusa;

And Whereas, upon receipt of the aforesaid Show Cause Notice, Mr. Vilas K. Parab, submitted his reply dated 30/06/2014;

And Whereas, on careful consideration of the reply, it is found that Mr. Vilas K. Parab, has not given any satisfactory explanation to the Show Cause Notice except denying the allegations made against him. It is found that the explanation given by Mr. Vilas K. Parab, is contrary to the findings of the Hon'ble High Court as well as the other Subordinate Courts.

In view of the above, I pass the following Order:

The services of Mr. Vilas Kashinath Parab, Model Room Assistant, Goa College of Architecture, Panaji shall stand dismissed forthwith.

The decision as regards recovering the Salary and other allowances paid to him shall be conveyed to him after obtaining the appropriate approval of the Government of Goa.

Sd/-

*Dr. Ashish K. Rege,
Principal”*

(Emphasis supplied)

17. The record reveals that the complainant - Mr Nashiket Parab had also filed a private criminal complaint against the petitioner before the Court of Judicial Magistrate First Class, Mapusa which was registered as Criminal Case No. 376/P/2010/D making a similar allegation regarding the birth certificate. The Court of Judicial Magistrate First Class, Mapusa acquitted the petitioner vide order dated 18/12/2018.

18. It is further important to note that the order of this Court referred to in the dismissal order of the petitioner was based upon prima facie findings which were limited to the order of issuance of process and not on merits. The Institution has failed to comply with the procedure prescribed under the said 'Rules' and proceeded to dismiss the petitioner based solely on the observations of documents produced by Mr Nashiket Parab, thereby violating the procedural law by imposing a major penalty of dismissal from service.

19. It is pertinent to note that the Institution did not carry out any independent inquiry as contemplated under Rule 14 (1) of the Central Civil Services (Classification, Control and Appeal) Rules 1965. The said provisions employ the word '*shall*', making it compulsory to conduct the inquiry before passing the dismissal order. The Institution merely observed that the explanation was unsatisfactory.

20. The concept of a '*show cause notice*' represents the initial steps in an administrative or legal process wherein an individual is formerly apprised of allegations. This notice of show cause serves as a mechanism to allow the recipient to present his side of the story, provide clarifications, or rectify any perceived errors before any punitive action is taken. By issuing a show cause notice, the authority acknowledges the principles of "*audi alteram partem*" or "*hear the other side*" ensuring fairness and due process in its proceedings. The significance of adhering to the confines of the show cause notice lies in upholding the Rule of Law and preventing arbitrary exercise of power. The action taken by the Institution is beyond the scope defined in the notice and therefore, it is

transgressed beyond the boundaries of legality and procedural fairness.

21. The Hon'ble Supreme Court in the case of ***The Board of High School and Intermediate Education, U.P. and others Vs Kumari Chitra Srivastava and others, reported in (1970) 1 SCC 121*** has categorically stated that the principles of *audi alteram partem* are required to be followed even if the same is burdensome in nature. Justice S. M. Sikri in his inimitable style stated as follows:

“principles of natural justice are to some minds burdensome but this price – a small price indeed – has to be paid if we desire a society governed by the rule of law.”

22. Due to the lack of compulsory inquiry, the petitioner was not afforded the opportunity to dispute the documents produced by the complainant. The Hon'ble Supreme Court in the case of ***M/s Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others in Civil Appeal Nos. 4458-4459 of 2015 vide order dated 14/05/2015*** emphasized the importance of compliance with procedural law and adherence to the principles of natural justice. In paragraph no. 23, words like '*procedural fairness*', '*right to a fair hearing*' are stressed. In paragraph 25, the principle of *audi alteram partem* is considered. The Paragraphs 23 and 25 of the judgment are reproduced below: -

23) This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as 'hearing the other side'. Prof. D.J. Galligans attempts to provide what he calls 'a general theory of fair treatment' by exploring what

it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasising that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham, who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision-making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

"On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time to time by the law makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved."

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit

of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject matter of fair treatment. However, that aspect need not be dilated upon.

25) It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

De Smith captures the essence thus - "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice".

Wade also emphasises that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. In Cooper v. Wandsworth District Board of Works, the Court laid down that: '...although there is no positive word in the statute requiring that the party shall be heard, yet justice of the common law would supply the omission of Legislature'. Exhaustive commentary explaining the varied contours of this principle can be traced to the judgment of this Court in Managing Director, ECIL, Hyderabad & Ors. v. B.

Karunakar & Ors. (1993) 4 SCC 727, wherein the Court discussed plenty of previous case law in restating the aforesaid principle, a glimpse whereof can be found in the following passages:

"20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A. K. Kraipak v. Union of India, (1969) 2 SCC 262; (1970) 1 SCR 457, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In Chairman, Board of Mining Examination v. Ramjee, (1977) 2 SCC 256, the Court has observed that natural justice is not an unruly

horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In Institute of Chartered Accountants of India v. L. K. Ratna, (1986) 4 SCC 537, Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (Bhopal Gas Leak Disaster Case) and C. B. Gautam v. Union of India, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated."

In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy, J echoed the aforesaid sentiments in the following words:

"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for

the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice."

23. Respondent No. 3 failed to assign any reasons while terminating the service of the petitioner and thus engaged in irregularities including non-adherence to the principles of natural justice and fair play. The petitioner was appointed by a duly constituted selection committee which verified and scrutinized the documents at the time of appointment of the petitioner in the year 1988, and the committee did not find any discrepancies in those documents. Hence, the date of birth entered in the service book of the petitioner is held to be 12/04/1958. Moreover, no inquiry was conducted as regards the birth certificate records of the Civil Registrar -Cum -Sub Registrar, Bardez, Goa, dated 30/04/1951 under registration No.1222 which alleges that the date of the birth of the petitioner is recorded as 12/04/1951. The discrepancies in the date of birth mentioned in the birth certificate and school leaving certificate were noted at the time of appointment of the petitioner and after clarification in that regard the birth certificate mentioning the date as 12/04/1958 was confirmed and entered in the service book of the petitioner. Therefore, Respondent No.3-Institution could not have terminated the services of the petitioner in the year 2014 after he had served for 26 years, 5 months and 4 days, without holding any fact-finding or disciplinary enquiry. Respondent No. 3

summarily issued a dismissal order in violation of the settled principles of law.

24. Respondent No. 3 has made a miserable attempt to justify the termination order by contending that the Institution has lost its trust and confidence in the petitioner. The justification provided by respondent No. 3 that the termination order is genuine and bonafide and the said apprehensions were formulated due to the conduct of the petitioner is unacceptable. Respondent No. 3 in the order of termination has categorically noted that the registration of FIR and the order of this Court upholding the issuance of process against the petitioner by the Court of Judicial Magistrate First Class at Mapusa gives rise to the aforementioned order. As of now, the petitioner has been acquitted by the Court of Judicial Magistrate First Class. Since the said order has attained finality, respondent No. 3 cannot now assert that the petitioner's acquittal in criminal proceedings is irrelevant and has no material effect in the present case. In the absence of any finding or inquiry that the petitioner obtained the said job based on a fake birth certificate, the allegation does not hold any water.

25. The view which we propose to take in the present case is fully supported by the judgments relied upon by the learned counsel for the petitioner Mr. T. Sequeria wherein the termination order without enquiry is held to be a gross violation of the principles of natural justice. In *Sachin Kumar (supra)*, the Court found that the termination was unjustified due to the lack of a disciplinary enquiry and the failure to provide an opportunity for the petitioner to show cause against the termination. In *Oryx Fisheries Private Limited*

(*supra*), the show cause notice issued to the appellant demonstrated a predetermined conclusion regarding the appellant's guilt, undermining the fairness of the proceedings. The authority must adhere to principles of natural justice, which include providing a reasonable opportunity for the appellant to defend against the charges before any punitive action is taken. The Hon'ble Supreme Court of India in the case of *Sandeep Kumar (supra)* held that the termination was unjustified due to the lack of a disciplinary enquiry and the failure to provide any opportunity to the appellant to show cause against the termination.

26. In the present matter, no preliminary or regular enquiry has been conducted in which the petitioner has been given any opportunity to refute the charges. The allegations against the petitioner were factual in nature which were required to be established by way of evidence. However, respondent No.3 neither conducted any regular nor any preliminary enquiry and only on the basis of show cause notice, straightaway termination order has been issued. The manner in which the termination order is passed flagrantly violates the principles of natural justice. The petitioner has been condemned with a major penalty of dismissal without enquiry which cannot be given the stamp of approval in view of the detailed reasons recorded above. Had the petitioner continued in service, he would have retired on 30/04/2018 on attaining the age of 60 years.

27. The impugned order of dismissal dated 10/07/2014 is quashed and set aside.

28. The Petitioner has given up the claim for back wages.

The Petitioner is granted continuity of service from the date of his dismissal till his retirement but without back wages. Respondent No. 3 is directed to give all the consequential and other retirement and terminal benefits including arrears of pension of the Petitioner within a period of 3 months from the date of uploading of the order.

29. Rule is partly made absolute. The petition is partly allowed and disposed of accordingly. No costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.