

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

**MAT 182 of 2020
With
CAN 2 of 2020 (Old No. CAN 1160 of 2020)
CAN 3 of 2023**

**Anil Kumar Prasad
Vs.
Food Corporation of India &Ors.**

For the Appellant/Petitioner : Mr. Soumya Majumder, Sr. Adv.,
Mr. Victor Chatterjee,
Mr. Pramitava Nath,
Ms. Shreya Bhattacharjee.

For the Respondent F.C.I. : Mr. Kamal Kumar Chattopadhyay,
Ms. Rimi Chatterjee.

Judgment on : May 11, 2026.

Madhuresh Prasad, J.:

1. Heard the learned senior advocate for the appellant and the learned counsel for the respondent.
2. The petitioner was proceeded against on an allegation of having obtained employment in the respondent organization on the basis of a manufactured caste certificate bearing No. 1316/88, dated

19.12.1988 purported to be issued by the Sub-Divisional Officer, Asansol. The petitioner unsuccessfully faced the proceeding and thereafter assailed the outcome. The writ petitioner relied upon the enquiry report, but assailed the findings of the Disciplinary Authority dated 05.10.2005 whereby and whereunder, the petitioner was dismissed from service. In an earlier writ proceeding W.P. 21536 (W) of 2005 the Writ Court was of the view that the petitioner was denied a fair opportunity of hearing.

3. The order of the Disciplinary Authority was set aside by the Writ Court keeping the respondents' option open to take steps pursuant to the enquiry report in accordance with law. A time frame was specified by the Writ Court.
4. Thereafter, the Disciplinary Authority served a disagreement notice on the petitioner differing with the findings of the Enquiry Officer. The petitioner was afforded an opportunity to make his comment on the disagreement note. The petitioner was also allowed a personal hearing by the Disciplinary Authority. In the course of personal hearing on 02.04.2014 the Disciplinary Authority considering the submissions of the writ petitioner, allowed the petitioner an opportunity to counter the contents of the Memo No. 1965/G dated 17.12.2003 issued by the Sub-Divisional Officer, Asansol (Burdwan). By this letter, the SDO had stated that the caste certificate relied upon by the writ petitioner at the time of obtaining the appointment was not issued by his office and that it was a manufactured one.

5. Thereafter, the petitioner was directed by a communication dated 02.04.2014 from the Assistant General Manager to produce a fresh caste certificate from the appropriate authority to substantiate his claim as a member of the Scheduled Tribe category. The petitioner submitted the caste certificate dated 25.06.2011 which was obtained by him during pendency of the proceeding being conducted against him. Upon receipt of such caste certificate the petitioner was allowed to resume his duties by an order dated 08.07.2014 issued under the signature of the Deputy General Manager (R) of the respondent Corporation. The relevant extract of the order of the Deputy General Manager reads:

“AND WHEREAS, in consideration of the submissions made by Shri Anil Kumar Prasad before the then General Manager (R) during the personal hearing held on 02.04.2014, a fresh scheduled Tribe Certificate obtained by Shri Prasad from the office of the Sub-Divisional Magistrate, Asansol (Burdwan), under certificate No. 3784/2011 vide Page No. 2284 dated 25.06.2011 to substantiate his caste status, was submitted by Shri Prasad on 08.04.2014

AND WHEREAS, Shri Anil Kumar Prasad vide letter dated 27.03.2014 has prayed for allowing him to resume duty.

NOW THEREFORE, the undersigned in exercise of the powers conferred under Regulation 66(4) of FCI (Staff) Regulations) 1971, hereby allows Shri Anil Kumar Prasad to resume his duties as Assistant Grade III (Depot). Shri Anil Kumar Prasad is directed to report to the Area Manager, FCI, Durgapur for further posting. Also Shri Anil Kumar Prasad is reinstated as AG III(D)) with immediate effect.

It is further ordered that the period from the date of dismissal order of Shri Anil Kumar Prasad, i.e. from 05.10.2005 till the date of the Hon'ble High Court's order, i.e. 29.1.2014 is treated as period under deemed suspension and the suspension period may be regularized

by granting leave due or EOL and the period from 30.01.2014 till the date of reinstatement is treated as period spent on duty, without any back wages, since Shri Prasad has not rendered any service to the Corporation during the material period.”

6. Subsequently, the authorities have given effect to this order dated 08.07.2014 by sending details of the calculation as regards the period between 05.10.2005 till the date of the order passed by the High Court in his earlier writ proceeding i.e. 29.01.2014. The admissible leave was granted to the petitioner by the office order dated 30.10.2014 in compliance of the order dated 08.07.2014. As a sequel to the earlier orders dated 02.04.2014 and 08.07.2014, the authorities also made a calculation of the petitioner's entitlement under the head “Salary” by an office order dated 19.02.2015.
7. The writ petitioner again approached the Writ Court contending that since the petitioner was allowed by the Disciplinary Authority to resume duties there was no occasion to penalize the petitioner. Once the authorities decided to allow him to resume his duties there was no provision under the Food Corporation of India (Staff) Regulations, 1971 (“1971 Regulation” for short) under which discretion could be exercised by the Disciplinary Authority to deprive the petitioner, of the dues including back wages, in respect of the period/s, as directed by the order dated 08.7.2014 issued by the Deputy General Manager (R).
8. In support of his submissions the learned senior advocate has relied upon Regulation 54 of the 1971 Regulations which deals with penalties. It is submitted that the discretion of the Disciplinary

Authority to award a punishment is circumscribed by the prescription of penalties in the Regulation. It is a settled principle of law that penal consequences are required to be specified and known to the person beforehand. The penalties were specifically enumerated in the Regulation 54 of the 1971 Regulations, under two heading; minor as well as major penalties. The deprivation as a consequence of the impugned letter dated 08.07.2014 is penal in nature. There is no source of power specified in Regulation 54 or any other Regulation of the 1971 Regulation for inflicting such penalty; and therefore, the impugned order dated 08.07.2014 is unsustainable.

9. Learned Senior Counsel relied upon decision of the Apex Court in the case of ***Vijay Singh -Vs.- State of Uttar Pradesh and Others*** reported in ***(2012) 5 SCC 242***. Specific reliance is placed on paragraph 15 of the judgment:

“15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant.”

10. It is, therefore, submitted that the penal consequences of the impugned order/s are unsustainable.

11. Learned Senior Advocate has assailed the findings of the Hon’ble Single Judge by submitting that the findings are

unsustainable in as much as the impugned order dated 08.07.2014 of the Deputy General Manager was found justified by the Hon'ble Single Judge relying upon Regulation 66(4) of the 1971 Regulation, which has no application to the facts and circumstances of the present case. The only provision in the Regulation dealing with penalties is Regulation 54. The penal consequences inflicted upon the petitioner are not in accordance with, rather in violation of Regulation 54 and, therefore, the penal consequence is unsustainable.

12. Learned Advocate for the respondent Corporation submits that the writ petitioner has approached the Writ Court belatedly. He has availed benefits of the impugned order dated 08.07.2014 and joined back in service. He has also taken the benefits of fixation of salary etc. done by the subsequent two orders dated 30.10.2014 and 19.02.2015, impugned in the writ proceeding.

13. An appeal dated 09.02.2015 was filed against the order of the Disciplinary Authority dated 08.07.2014 more than seven months after the order was passed by the Disciplinary Authority. The Service Regulations prescribed a limitation of 45 days for filing the appeal. The petitioner's appeal was barred by limitation. Even the writ petition was filed in the year 2016 which is apparent from a bare perusal of the writ petition.

14. The learned advocate for the respondent Corporation submits that the petitioner did not challenge the order dated 28.07.2016

passed by the Appellate Authority affirming the impugned order. In absence of challenge to the appellate order, the relief prayed for is not sustainable.

15. The learned Advocate has also made submissions with reference to the doctrine of approbate and reprobate. He submits that the writ petitioner was permitted to rejoin service by an order dated 08.07.2014 issued by the Disciplinary Authority subject to certain terms and conditions explicit therein. The petitioner has acted upon such permission granted by the Disciplinary Authority. He has availed the benefits of the order of the Disciplinary Authority dated 08.07.2014. He, therefore, cannot be permitted to turn around and challenge the terms and conditions contained in the order of the Disciplinary Authority dated 08.07.2014.

16. In support of his submissions, he relied upon two judgments of the Apex Court in the case of ***Rajasthan State Industrial Development and Investment Corporation and Another -Vs.- Diamond & Gem Development Corporation Limited and Another*** reported in ***(2013) 5 SCC 470*** and another decision in the case of ***Cauvery Coffee Traders, Mangalore -Vs.- Hornor Resources (International) Company Limited*** reported in ***(2011) 10 SCC 420***. It is submitted that the writ petition filed by the petitioner was rightly rejected by the Hon'ble Single Judge and the order of the Hon'ble Single Judge dated 30.08.2019 passed in W.P. 9950 (W) of 2016 does not require any interference.

17. While considering the submissions and going through the records of the present Intra Court Appeal, we found that the order of the Disciplinary Authority dated 08.07.2014 takes notice of a fact that the petitioner during pendency of the Disciplinary Proceeding had obtained a fresh caste certificate dated 25.06.2011 issued by the Sub-Divisional Magistrate, Asansol (Burdwan) under certificate No. 3784/11. Vide letter dated 27.03.2014 the writ petitioner requested the Disciplinary Authority to allow him to resume duty. In response thereto and based on such request of the writ petitioner, an order dated 02.04.2014 was issued by the Disciplinary Authority, giving the petitioner an opportunity to produce the fresh caste certificate, and counter the contents of the memo dated 17.12.2003 issued by the Sub-Divisional Officer, Asansol. The writ petitioner thereafter submitted the fresh caste certificate dated 25.06.2011, before the Disciplinary Authority on 08.04.2014. We were of a *prima facie* view that the writ petitioner's request, in the letter dated 27.03.2014 was, a vital document being a relevant and material fact. We, however, found that there was no mention regarding this letter in the writ petition filed by the petitioner.

18. Upon such observation the learned senior advocate submitted that even in the affidavit-in-opposition the respondents have not dealt with the letter dated 27.03.2014. He further submitted that the impugned order of the Disciplinary Authority dated 08.07.2014 was on record and the same took into consideration the letter dated

27.03.2014. Therefore, no case of suppression is made out against the writ petitioner.

19. We are inclined to accept such submission of the learned Senior Advocate that there was sufficient disclosure regarding the writ petitioner's letter dated 27.03.2014 on the records in the writ proceeding. A wilful and deliberate misrepresentation or suppression of a relevant fact, therefore, may not arise in the present case.

20. The fact, however, remains that the petitioner's dismissal by the order of the Disciplinary Authority dated 05.10.2005 was on the ground of having obtained appointment on the basis of a manufactured caste certificate dated 19.12.1988. Though the disciplinary authority's order was interfered by the writ court earlier in WP No.21536 (W) of 2005, the same was on the ground of punishment being as a result of an unfair and unsustainable procedure. The writ court interfered with the finding on the ground of procedural irregularity/illegality. The merits of the petitioner's claim with reference to the caste certificate dated 19.12.1988 was still to be considered by the authority. The writ court thus, left the issue open for the authorities to proceed in accordance with law.

21. The disciplinary authority therefore, allowed the petitioner an opportunity of personal hearing. The petitioner was given an opportunity to place his stand with reference to the Memo dated 17.12.2003 issued by the Sub-Divisional Officer, Asansol wherein the

SDO reported that the caste certificate dated 19.12.1988 relied upon by the writ petitioner at the time of his appointment was not issued by his office. At this juncture, the writ petitioner vide his letter dated 27.03.2014 requested the disciplinary authority to allow him to resume duty. Thereafter, the writ petitioner on 02.04.2014 during personal hearing requested the disciplinary authority that he may be allowed to produce a fresh Schedule Tribe Certificate, dated 25.06.2011 to substantiate his claimed caste status as a member of the Schedule Tribe. Therefore, it is clear that the petitioner chose to produce another caste certificate, rather than contest the report of the sub-Divisional Officer dated 17.12.2003 stating that the caste certificate dated 19.12.1988 based on which the petitioner had obtained the employment was a manufactured one and that it was not issued by the office of the SDO. Clearly, the petitioner was not in a position to dispute such report of the sub-Divisional Officer dated 17.12.2003. If the petitioner was sanguine that the caste certificate dated 19.12.1988 was not a manufactured one, or that the report of the SDO, that it was not issued by his office was wrong, he would surely have availed the opportunity granted by the Disciplinary Authority to contest such report of the SDO. He has consciously chosen not to do so, rather he requested the authority to allow him to substantiate his ST Caste status by submitting a subsequent caste certificate dated 25.06.2011, and requested permission to resume his duties accordingly.

22. Therefore, such permission to re-join was granted by the Disciplinary Authority only after the petitioner made a conscious decision not to deny or dispute the SDOs report dated 17.12.2003 regarding the earlier caste certificate dated 19.12.1988 being a manufactured one and not issued from the office of the sub-Divisional Officer. The petitioner's reliance on the subsequent caste certificate dated 25.06.2011 is a clear indication of the fact that he did not deny or dispute the allegations for which he was proceeded against.

23. After making a request before the disciplinary authority by way of his letter dated 27.03.2014 and thereafter in the course of oralhearing on 02.04.2014 to produce a fresh caste certificate (dated 25.06.2011), the petitioner never claimed that the earlier caste certificate dated 19.12.1988 was issued by the office of the SDO, or that the report of the SDO denying issuance of the same was wrong/false. The conduct of the petitioner borne from these actions leaves no room for doubt that the petitioner was relying upon the second caste certificate dated 25.06.2011 to allow him to resume duties as an ST category. The authorities also have allowed the petitioner to resume his duties based on the subsequent caste certificate dated 25.06.2011.

24. It is under such circumstances that the disciplinary authority while allowing the petitioner to resume duties by its order dated 08.07.2014 ordered that the period from the date of dismissal (05.10.2005) till the date of the High Court's order (29.01.2014) was to

be treated as period under deemed suspension which may be regularized by granting leave due or extra-ordinary leave. The period thereafter, that is from 30.01.2014 till the date of reinstatement was to be treated as period spent on duty, but without any back wages, on the principle of no work no pay.

25. Acting on such order of the disciplinary authority dated 08.07.2014 the writ petitioner resumed his duties and availed the benefits consequent to such decision of the disciplinary authority. The disciplinary authorities order dated 08.07.2014 allowed resumption of duties subject to conditions contained therein, since the petitioner did not deny, dispute or contest the allegation regarding the earlier caste certificate dated 19.12.1988 being illegal. Accepting the second caste certificate dated 25.06.2011, he was allowed to resume duties.

26. Whether, it was proper and legal to allow the petitioner to resume duties, even though he did not contest the allegation of the caste certificate dated 19.12.1988 based on which he was appointed, being invalid is, an issue which if raised by the disciplinary authority at that point of time, would have put the petitioner in a difficult spot. However, no such issue was raised, and the disciplinary authority decided to accept the second/ subsequent caste certificate dated 25.06.2011 and allowed him to resume duties subject to the condition/s noted above. Therefore, the petitioner's joining was conditional. The order of the disciplinary authority dated 08.07.2014 was a contingent order. The petitioner consciously accepted the order

as it is and availed the benefits pursuant to the disciplinary authorities order dated 08.07.2014. The petitioner therefore, cannot subsequently be permitted to make a *volte-face*. Having accepted the disciplinary authorities conditional order dated 08.07.2014 he cannot subsequently be permitted to raise an issue regarding the conditions, already accepted at the time of resuming his duties in terms of the order dated 08.07.2014. The conditions contained in the order of the Disciplinary Authority dated 08.07.2014 are the conditions based on which the petitioner was allowed to resume duties. Such conditions therefore, are inseparable from the permission to resume/ rejoin. The petitioner did not have the option of resuming duties without accepting the conditions inherent in the order dated 08.07.2014. The order dated 08.07.2014 is to be read as a whole in the above context, as a composite order, including the conditions contained therein. There was no option for the petitioner to accept only a part of the same and raise a dispute regarding the conditions based on which the permission to resume duty was granted.

27. We at this juncture consider it profitable to refer to the doctrine of approbate and reprobate. The law does not permit a person who accepts the benefits of an instrument/order, that having obtained such an advantage which he could be entitled to considering the order as a whole, at a subsequent time to say that the self-same order is bad so as to reject the self-same order. A person cannot be permitted to abide by certain terms of the order advantageous to him and

repudiate the other terms which form the bedrock of the advantages availed from the self-same order. In this context decisions of the Apex Court in **Cauvery Coffee Traders, Mangalore** (supra) and the decision of the Apex Court in the case of **Rajasthan State Industrial Development and Investment Corporation and Another** (supra) squarely covers the facts and circumstances of the present case. This Court would also take into consideration another decision of the Apex Court, on the same point, in the case of **Shyam Telelink Ltd. v. Union of India**, reported in **(2010) 10 SCC 165**, wherein the Hon'ble Supreme Court of India stated:

“23. The maxim qui approbat non reprobatur (one who approves cannot reprobate) is firmly embodied in English common law and often applied by courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approve and reprobate or accept and reject the same instrument.

24. In Ambu Nair v. Kulu Nair [(1932-33) 60 IA 266 : AIR 1933 PC 167] the doctrine was explained thus: (IA p. 271)

“Having thus, almost in terms, offered to be redeemed under the usufructuary mortgage in order to get payment of the other mortgage debt, the appellant, Their Lordships think, cannot now turn round and say that redemption under the usufructuary mortgage had been barred nearly seventeen years before he so obtained payment. It is a well-accepted principle that a party cannot both approve and reprobate. He cannot, to use the words of Honyman, J. in Smith v. Baker [1873 LR 8 CP 350] LR at p. 357:

‘... at the same time blow hot and cold. He cannot say at one time that the transaction is valid, and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and at another time say it is void for the purpose of securing some further advantage.’ ”

25. The view taken in the above decision has been reiterated by this Court in *City Montessori School v. State of U.P.* [(2009) 14 SCC 253] To the same effect is the decision of this Court in *New Bihar Biri Leaves Co. v. State of Bihar* [(1981) 1 SCC 537] where this Court said: (*New Bihar case* [(1981) 1 SCC 537] , SCC p. 558, para 48)

*“48. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is *qui approbat non reprobat* (one who approbates cannot reprobate). This principle, though originally borrowed from Scots law, is now firmly embodied in English common law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (*per Scrutton, L.J., Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.* [(1921) 2 KB 608 : 1921 All ER Rep 215 (CA)] ; ...).”*

26. The decision of this Court in *R.N. Gosain v. YashpalDhir* [(1992) 4 SCC 683 : AIR 1993 SC 352] brings in the doctrine of election in support of the very same conclusion in the following words: (SCC pp. 687-88, para 10)

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that

no party can accept and reject the same instrument and that:

‘... A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.’

(See Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd. [(1921) 2 KB 608 : 1921 All ER Rep 215 (CA)] KB at p. 612, Scrutton, L.J.) According to Halsbury's Laws of England, 4th Edn., Vol. 16:

“1508. Examples of the common law principle of election.—After taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside.’ ”

28. If the authorities had proceeded against the petitioner under the conduct regulations, surely the consequences of obtaining an appointment on the basis of a false caste certificate would have been much more severe than the conditions, contingent upon which the petitioner was allowed to resume duties under the order of the disciplinary authority dated 08.07.2014. Apparently, the writ petitioner was conscious of such consequence. He therefore, chose not to contest the report of the SDO regarding the caste certificate based on which the petitioner obtained the employment not being issued by his office; and that the same was a manufactured one.

29. We therefore, find that there is no scope for the petitioner to repudiate or challenge the conditions in the order dated 08.07.2014 and the consequential orders quantifying the dues as a result of the

conditions contained in the disciplinary authority's order dated 08.07.2014. The petitioner failed to make out a case for interference with the conditions contained in the order of the disciplinary authority and the consequential orders dated 30.10.2014 and 19.02.2015.

30. In view of our above consideration and since the present case does not involve imposition of a penalty pursuant to a proceeding under the conduct regulations, we are of the view that the observation of the Hon'ble Single Judge regarding the provisions contained in the service regulations, for sustaining the penal conditions in the order dated 08.07.2014 were uncalled for and unwarranted. In fact, since the petitioner gave up his contest to the allegations, including the report of the Sub-Divisional Officer dated 17.12.2003 regarding the caste certificate based on which he sought employment, being false/illegal, the proceeding was not required to be conducted. Therefore, the Disciplinary Authority entertained the petitioner's request to resume duties based on the subsequent caste certificate dated 25.06.2011; but subject to certain terms and conditions which were duly accepted by the petitioner. The non-challenge to the order of the appellate authority, dated 28.07.2016 is also a similar lapse on the part of the writ petitioner. Therefore, there was no scope for the petitioner to challenge the order dated 08.07.2014, passed by the Disciplinary Authority, and the consequences thereof.

31. In view of our above consideration we find that the writ petition was fit to be dismissed. The order of the learned Single Judge to this extent does not require any interference in the intra-court appeal.
32. The appeal and the writ petition are accordingly dismissed.
33. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)