

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

LPASW No.138/2007, CMP No. 155/2007.

Date of decision: 22.10.2010

Suresh Kumar v. State and others

Coram:

**Hon'ble Mr. Justice Virender Singh-Judge
Hon'ble Mr. Justice Sunil Hali- Judge.**

Appearing counsel:

**For the appellant(s) :Mr. D.S.Chouhan, Advocate.
For the respondent(s) :Mrs. Neeru Goswami, Dy.AG
for R-1 to 5.
Mr. D.K.Khajuria, Adv. for R-6.
Mr. Kishore Kumar,Adv. for R-7.**

- i/ Whether to be reported in : Yes.
Press, Journal/Media.
ii/ Whether to be reported in : Yes.
Digest/Journal.
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Per Sunil Hali-J.

Applications were invited for the post of teachers under RET scheme. A combined panel for Girls Primary School, Dharmal, Govt. Primary School Barnai and Girls Primary School, Barnai, Jammu was prepared on the recommendation made by the Village Level Committee. The appellant did not figure in the said panel. As per the said panel, one Ravi Kumar son of Sh. Tej Ram was appointed in Girls Primary School, Dharmal, Karan Singh son of Sh. Janak Singh in Govt. Primary School, Barnai and respondent no.6-Rakesh Dogra (writ petitioner) came to be engaged as third teacher in Govt. Girls Primary School, Barnai. He is stated to have joined the services on 17.11.2003.

The present appellant (respondent no.5 in the writ petition) came to be engaged by the Zonal Education Officer, Jammu vide order dated 05.02.2004 on the

basis of the communication dated 19.12.2003 issued by the Director School Education, Jammu which was conveyed on 31.01.2004 through Chief Education Officer, Jammu. This order was issued by respondent no.4. The effect of order was termination of private respondent no.6-writ petitioner, who was initially appointed in the year 2003. Order terminating the petitioner and appointing the appellant came to be challenged before the learned Single Judge.

The learned Single Judge set aside the order of appointment of the appellant-respondent no.5 in the writ petition on the following terms:-

- (a) That order of termination of respondent no.6 (writ petitioner) was issued without notice to him and thus violative of rules of natural justice;
- (b) That the form of the appellant was accepted after the last date of receipt of the application forms;
- (c) That the appellant did not figure in the panel prepared by the Village Level Committee.

It is this order of learned Single Judge which is subject matter of challenge before us.

We have heard learned counsel for the parties and perused the record.

Following pleas have been taken in this appeal by the appellant:-

- (i) That reliance placed by the learned Single Judge on the receipt register did not make out that entry was manipulated;
- (ii) That the name of the appellant was inadvertently omitted by the respondents initially which on representation made by

- him was corrected on the instructions of the Director School Education, Jammu;
- (iii) That before setting aside of the order by the learned Single Judge, inquiry had to be ordered.

There is no dispute that the appellant did not figure in the panel prepared by the official respondents. The private respondent no.6 (writ petitioner) came to be engaged on the basis of panel prepared and consequently appointment order was issued in his favour. He served till the order of his termination was issued. No notice was issued to respondent no.6 before cancelling his appointment order.

The other aspect of the matter is that appellant came to be engaged vide order dated 06.12.2003 in Govt. Primary School, Dharmal in place of one Ravi Kumar, who was earlier appointed to the said post. On the basis of communication dated 19.12.2003 addressed to the Chief Education Officer, Jammu , the Deputy Commissioner, Jammu stated that Dharmal and Barnai are two separate villages, as such, appointment of the appellant in the said school was not in accordance with the scheme. Consequently, the case of the appellant was processed for being appointed in Govt. Girls Primary School, Barnai in pursuance to the communication issued by the Director School Education, Jammu on 19.12.2003 which was conveyed through Chief Education Officer, Jammu on 31.01.2004.

The order of termination of writ petitioner-private respondent no.6 was passed without following the rules of natural justice. He had worked on the post for more than three months. Least that was expected from the

respondents before cancellation of the order of appointment was that they should have informed the reasons of such cancellation. The said order admittedly has been issued without hearing the writ petitioner, as such, it violates rules of natural justice. The said act of the official respondents is thus against the principles of natural justice.

In AIR 2005 SC 2090, Canara Bank v. V.K.Awasthy, the Apex Court has held as under :-

8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions ``natural justice'' and ``legal justice'' do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory

recognition of this principle found its way into the ``Magna Carta''. The classic exposition of Sir Edward Coke of natural justice requires to ``vocate interrogate and adjudicate''. In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. ``Adam'' says God, ``where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat''.

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond"

In para 12 of the aforesaid judgment, the apex court has further held as under :-

What is meant by the term 'principles of natural justice' is not easy to determine. Lord Summer (then Hamilton, L.J.) in Ray v. Local Government Board, (1914) 1 KB 160 at p.199:83 LJKB 86) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Sanckman, (1943) AC 627: [1948] 2 All ER 337, Lord Wright observed that it was not desirable to attempt 'to force it into any procusteam bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity' to every party of being heard.

Law is well settled that no body shall be condemned unheard. Rules of natural justice are inherent in every statute and any violation in not observing the said rules, violates Article 14 of the Constitution of India. On this ground alone the writ petition was required to be allowed.

In view of above, we do not agree with the arguments advanced by the learned counsel for the appellant in this behalf. It is a well settled proposition of law that once any benefit is conferred upon a citizen, the same cannot be withdrawn varied or rescinded without affording him an opportunity of explaining the

circumstances and showing the cause against the proposed action.

The principles of natural justice are the blood and soul of our constitutional system, which cannot be taken away by any authority on any pretext. A person getting a benefit even on the basis of so-called void order or an order without jurisdiction, has the right to be heard before the order conferring benefits upon him is varied or altered. The authority proposing the action cannot be conferred with the jurisdiction to decide itself as to whether the order sought to be revised, modified or altered without affording an opportunity of being heard in the matter. If such a right is conferred upon the authority taking action against the civil servants, it will result in chaos and a sense of insecurity among the civil servants which is not warranted under law. The official respondents could have taken the action only after compliance of the rules applicable in the case or in case rule did not contemplate of hearing the affected person then the principle of natural justice is required to be followed. We say so because non providing of an opportunity of being heard violates Article 14 of the Constitution.

In the given circumstances, the act of the respondent-authorities in canceling the order of appointment of respondent no.6 (writ petitioner) without affording him any opportunity of being heard, is an act which is violative of principles of natural justice.

Regarding second contention, we do not want to enter into this arena as to whether appellant had submitted his form within the stipulated period or not. Since the writ petition was allowed only on the ground of violation of natural justice, we do not find any force in this appeal. However, the direction issued by the

learned Single Judge regarding cost of Rs.20,000/- to be paid by the official respondents to the writ petitioner (respondent no.6. herein), is set aside and to that extent judgment of learned Single Judge stands modified.

In view of above, this appeal is partly allowed along with connected CMP(s).

(Sunil Hali) (Virender Singh)
Judge Judge

Jammu
22.10.2010.
'Madan'