HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPASW No. 88/2009
CMA no. 121/2009

Date of order: 29.11.2012

Manohar Lal v. State of J&K and ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:
For the appellant(s) : None.
For the respondent(s) :

i)	Whether to be reported in Press, Journal/Media	:	Yes
ii/	Whether to be reported in Digest/ Journal	:	Yes

M. M. Kumar, CJ

1. The instant appeal challenges the judgment and order dated 07.05.2009 rendered by the learned Single Judge of this Court, holding that the appellant-petitioner was given promotion as Master on 25.05.2005 on the assumption that he was appointed as Teacher on 13.12.1988. The respondent-Department later on found that in fact he was appointed as Teacher on 10.09.1992 and was thus not eligible for promotion to the post of Master.

2. The appellant-petitioner approached the Writ Court with the prayer that order dated 08.11.2005 cancelling the order of promotion was passed by the Director School Education Jammu, without following the principles of natural justice. The learned Single Judge rejected his prayer by holding that the

rules of natural justice are not a mere ritual but their non-compliance must adversely affect the rights of a person. The learned Single Judge held that once the appellant-petitioner has admitted that he was appointed as Teacher in the year 1992 then there was hardly any need to send any notice to him.

3. Having perused the memo of appeal and the impugned judgment of the learned Single Judge, we fully concur with the view taken in the impugned judgment and order. It is well settled that rules of natural justice are not always necessary to be applied if the result would be to revive an illegal order. In that regard reliance may be placed on various judgments of Hon'ble the Supreme Court. In that regard reliance may be placed on the judgment rendered in the case of **Gadde Venkateswara Rao v. Govt. of A.P**, **AIR 1966 SC 828;** para 38 of the judgment of Hon'ble the Supreme Court in the case of **Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and ors**, **(1999) 8 SCC 16** and para 17 of the judgment of Hon'ble the Supreme Court in case of **M. C. Mehta v. Union of India** and ors, **(1999) 6 SCC 237**. After placing reliance on various observations made in Gadde Venkateswara's case (supra), their Lordships of the Supreme Court in the concluding part of para 17 of the judgment in M.C.Mehta's case (supra) proceeded to observe as under:-

> "The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law."
> **(Emphasis added)**

4. It is equally well settled that principles of natural justice are not required to be followed if it amounts to a useless formality. In that regard reliance may be placed on the judgment of the Supreme Court rendered in the case of **Aligarh Muslim University and ors v. Mansoor Ali Khan (2000) 7 SCC 529**. The theory of 'Useless Formality' has now been evolved to apply to appropriate cases. (See **Canara Bank v. V. K. Awasthy (2005) 6 SCC 321**). In **S. L. Kapoor v. Jagmohan (1980) 4 SCC 379,** Hon'ble the Supreme Court has carved out two exceptions to the general principles of natural justice namely that if on the admitted or indisputable facts only one conclusion was possible then the principle concerning breach of rules of natural justice in itself prejudice the delinquent was not to apply. In other words, if no other conclusion was possible, on admitted and indisputable facts then there is no legal obligation to quash the order which was passed in violation of principle of natural

justice. Another exception was that in addition to breach of natural justice, prejudice must also be proved. Eventually applying the 'useless formality' theory their Lordship has held as under:-

> "24. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, - there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M. C. Mehta, 1999 AIR SCW 2754 : (AIR 1999 SC 2583), referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs, Garner, Craig, De Smith, Wade, D. H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

5. The Supreme Court further held after quoting in para 31 as under:-

> "31. Let us then take two situations. An employee who is permitted to be abroad for two years on a job seeks extension for 3 years but is granted extension only for 1 year and is also told in advance that no further extension will be given and if does not join after the 1 year extended period, he will be deemed to have vacated office. Let us assume that he does not join as advised and, in a given case, notice is given calling for his explanation. He replies stating that he had entered into a further commitment for 2 years and wants

> one more year of extension. The University refuses extension treating the explanation unsatisfactory and under Rule 5 (8) (i) deems that he has vacated his job. No fault can be found in the procedure. Let us take another situation where the officer does not join in identical circumstances but is not given notice under Rule 5 (8) (i). He has no other explanation – from what is revealed in his writ petition filed later – other than his further commitment abroad for 2 more years. In the latter case, it is, in our opinion clear that even if no notice is given, the position would not have been different because what particular explanation would not be treated as satisfactory had already been intimated to him in advance. Therefore, the absence of a notice in the latter situation must be treated as having made no difference. That is precisely the position in the case of Shri Mansoor Ali Khan."

6. The aforesaid view has been approved, applied and followed by Hon'ble the Supreme Court in M.C.Mehta's case (supra). In para 21 a detailed reference has been made to these principles. Likewise if only one view is possible then such rules would not be attracted. For the aforesaid proposition reliance may be placed on the judgment of Hon'ble the Supreme Court rendered in the case of **Ram Chander Tripathi v. U.P. Public Services Tribunal (1994) 5 SCC 180**.

7. When the principles laid down by Hon'ble the Supreme Court are applied to the facts of the present case it becomes apparent that the appellant-petitioner was appointed as a Teacher in the year 1992 and not in the year 1988. There is nothing on record to show anything to the contrary, therefore, the order dated 25.05.2005 passed by the respondents, giving

him promotion as Master was found to be factually unsustainable and the same was rightly withdrawn vide order dated 08.11.2005. If the order of the respondents dated 08.11.2005 is set aside it would result into revival of order dated 25.05.2005, which is a wholly illegal order as it proceeds on the assumption that the appellant-petitioner was appointed as Teacher in the year 1988 whereas actually he was appointed as Teacher in the year 1992. Therefore, the learned Single Judge has rightly declined to exercise the extra ordinary jurisdiction under Article 226 of the Constitution.

8. On precedents, principles and the rule of law, we find that the appeal would not merit admission and is thus liable to be dismissed.

9. As a sequel to the above discussion, this appeal fails and the same is dismissed.

(Mohammad Yaqoob Mir)
Judge

(M. M. Kumar)
Chief Justice

JAAMU:
29.11.2012
Anil Raina, Secy.