Sr. No. 49
Reg. List.

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No. 442/2016
IA No. 01/2016

Date of order: 28.02.2019

Ghulam Rasool Khan

Versus

State of JK and others

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

Appearing Counsel:
For Petitioner(s)/Appellant(s): Mr. Owais Geelani, Adv.
For Respondent(s): Mr. Satinder Singh, for 3

1. The petitioner claims that he was initially an employee of Fallah-i-Aam Trust (for short "*FAT*") and pursuant to the policy of the Government, he came to be appointed as Teacher in the Department of School Education, Kashmir, in terms of Order of the District Education Officer, Kupwara, issued vide his Order No. Esstt/FAT/K/876-78 dated 15.04.1991. It is submitted that at the time of his appointment, he was matriculate. Accordingly the service book was prepared in which all his particulars including the educational qualification were correctly entered.

2. He served the Department as a Teacher for more than 24 years and thereafter applied for voluntary retirement on the health grounds. The request of the petitioner for voluntary retirement was processed and same was ultimately accepted by the competent authority, i.e. Director School Education, Kashmir who vide his Order No. 2536 DSEK of 2015 dated 08.10.2015, accorded sanction to the voluntary retirement of the petitioner. It is urged that after the accord of

sanction for voluntary retirement by the Director, School Education, Kashmir, the case of the petitioner was also processed for grant of Post retiral benefits. The gratuity and other post retiral benefits came to be sanctioned. While the petitioner had peacefully retired from service and was receiving due pension as per rules, respondent no.4 came up with impugned order, whereby sanction for voluntary retirement given in favour of the petitioner, was withdrawn. Order No.248 DSEK of 2016 dated 26.02.2016 passed by respondent no.4 in this regard is subject matter of challenge in this petition.

3. It is submitted that the Order impugned dated 26th February, 2016 has, purportedly, been passed pursuant to the communication of Financial Advisor/CAO, School Education Department vide his No. Edu/Acctts/Vol. Retirement/2015/ 1027 dated 29.12.2015, which is also assailed in this petition.

4. The respondents were put on notice and given ample opportunities to file the reply. It is also noteworthy that this Court vide its Order dated 11th March, 2016, had also stayed the order impugned dated 26th February, 2016.

5. The petition was admitted to hearing on 28th November, 2017 and respondents were given opportunity to file counter affidavit. No reply has been filed by the respondents. However, respondent no.3 represented by Mr. Satinder Singh, standing counsel for respondent no. 3, has come present to argue the matter.

6. Having heard learned counsel for the parties and perused the record, I am of the view that the petitioner is entitled to the relief prayed for in the writ petition.

7. Admittedly, the petitioner was an employee of FAT which was later on banned by the Government. Pursuant to the policy of the Government, all the teachers earlier serving in banned FAT were adjusted in the School Education Department. In these circumstances, the petitioner also came to be appointed as Teacher in School Education Department and the formal order in this regard

was issued by the competent authority. The service book of the petitioner as per the particulars given by him was also prepared. The petitioner at the time of applying for the voluntary retirement had served the department for more than 24 years, as is apparent from the entries in the service book.

8. The petitioner, as is claimed, applied for voluntary retirement on health grounds. The matter was processed at different levels and upon verification of service records, the request of the petitioner for voluntary retirement was accepted. The matter was processed further, for release of post retiral benefits. The Pension Payment Order and gratuity payment order are placed on record. It is claimed that the post retiral benefits in favour of the petitioner were also sanctioned.

9. As is correctly submitted by the learned counsel appearing for the petitioner that while the petitioner had been enjoying the post retiral life and receiving his pension from the respondents, all of a sudden and without being putting the petitioner to notice, the impugned order came to be passed. From the Order impugned, it would transpire that the order impugned was passed on the communication of the Financial Advisor/CAO, School Education Department, in which it is noted that there was some verification undertaken by the Vigilance Organization, in which qualification certificate submitted by the petitioner to the Department has been found to be fraudulent and not actually belonging to the petitioner. In the aforesaid communication, it is also mentioned that the matter has been taken up with the Crime Branch for registration of the formal case which fact is substantiated by the aforesaid communication. Learned counsel appearing for the petitioner submits that no such case has been registered so far.

10. Learned counsel for the petitioner has also drawn the attention of this Court to the qualification certificate, i.e. Matriculation examination, issued by

the Jammu and Kashmir State Board of School Education and also relevant entries made in the service book.

11. From the perusal of the record, it could not be found out as to how the respondents are finding fault with the qualification certificate produced by the petitioner before the respondents at the time of his initial engagement nor any reason is coming forth as to how this error, if any, has remained undetected for more than two decades.

12. Be that as it may, even, what is stated in the communication impugned is taken correct on its face value, still it was a case where no adverse action against the petitioner could have been taken without complying with the principle of nature justice. In ***A. K. Kriapak and ors v. Union of India & ors (1969) 2 SCC 262***, a Constitution Bench of the Supreme Court has held that the distinction between quasi-judicial and administrative order has gradually become thin. Now it is totally eclipsed and obliterated. The aim of the rule of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in ***Col. J.N.Sinha v. Union of India & anr (1971) 1 SCR 791***.

13. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words the application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/her an opportunity of putting

forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In ***Mohinder Singh Gill & anr v. The Chief Election Commissioner & ors. (1978) 2 SCR 272***, the Constitution Bench of the Supreme Court has held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotion everything that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In ***State of Orissa v. Dr.(miss) Binapani Dei & ors***, the Supreme Court has held that even an administrative order, involving civil consequences, must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

14. In ***State of West Bengal v. Anwar Ali Sarkar (1952) SCR 289***, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In ***Maneka Gandhi v. Union of India (1978) 2 SCR 62 1***, another Bench of Seven Judges of the Supreme Court held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against

an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

15. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be

reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by the Supreme Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable. Thus, the principle of natural justice is an integral part of the guarantee of equality assured by Article 14. Any law made or action taken by an authority must be fair, just and reasonable. Article 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result.

16. In view of the aforesaid, I am inclined to accept this petition and quash the impugned order as well the communication. In the peculiar facts and circumstance of the case, no order as to costs.

17. Disposed of as above along with the connected IA(s).

(Sanjeev Kumar)
Judge

Srinagar
28.02.2019
Imtiyaz