Shashi Kant Pandey Vs Executive Engineer, Anusandhan Avam Niyojan, Jal Sansadhan Prakhand and Another

Court: Allahabad High Court

Date of Decision: May 23, 2003

Citation: (2003) 2 UPLBEC 1738

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Advocate: S.K. Varma and Sidhartha Varma, for the Appellant; M.C. Charutvedi and S.C., for the Respondent

Final Decision: Disposed Of

Judgement

R.B. Misra, J.
Being arrived by the order of removal dated 20.11.1998 the petitioner has filed this writ petition for direction to the

respondents to reinstate the petitioner.

2. I have heard learned Counsel for the petitioner as well as learned Counsel representing the respondents.

3. The relevant facts necessary for adjudication of this writ petition are that the petitioner was appointed to the post of Seenchpal on a temporary

basis in Sinchai Khand, Second Division, Deoria. He joined the post on 3.11.1987 and thereafter the petitioner was posted at different places

including Pump Canal Division (II), Ghazipur from 30.6.1994 to 3.2.1997, the petitioner remained at Sinchai Nirman Khand, Ghazipur on

4.2.1997, thereafter, he was transferred to Anusandhan Avam Niyojan, Jal Sansadhan Khand, Varanasi. The petitioner"s services were made

permanent by an order dated 24.7.1993, w.e.f, 7.2.1991. It appears that the petitioner also appeared in the examination of Seenchpal

Parivekshak and he was declared successful on 22.3.1994. The President of Seenchpal Sangh, Lucknow made a complaint to the Chief Engineer,

Varanasi that the appointment of the petitioner was fictitious. On superferous preliminary enquiry made by Executive Engineer on 12.9.1994, the

petitioner was found to be innocent, however, the salary of the petitioner for the month of November, 1997 and for subsequent period was

stopped and he was placed under suspension by an order dated 6.12.1997.

4. The Writ Petition No. 42374 of 1997, filed by the petitioner was disposed of on 17.12.1997 and the suspension order dated 6.12.1997 was

quashed as no departmental enquiry against the petitioner was pending.

5. It appears that prior to passing the above order by High Court there was already a confidential intimation by one Chief Engineer (Karmik) to on

another Chief Engineer of Irrigation Department of the records that there were complaints which arose suspicion about the credibility of all

Seenchpal/Seenchpal Parivekshak as many of them have managed such appointments by forging and fabricating documents of initial appointment

orders. These records/documents were to be scrutinised thoroughly because by such forgery the State Government has been defrauded affecting

State Exchequer and if necessary, the First Information Report (F.I.R.) were to be lodged in such scandal for taking legal action against them. In

reference to the records of petitioner another order dated 23.1.1998 was passed by the Executive Engineer placing the petitioner under suspension

on the following charges :

(i) For forging the documents and fraudulently procuring the appointment to post of Seenchpal on 3.11.1987 in Sinchai Khand Division-II.

(ii) For defrauding the Irrigation Departments by forging documents.

(iii) For causing financial loss and damage to the State Government by fabricating the forged appointment.

6. The Writ Petition No. 6334 of 1998 challenging the above suspension order was dismissed on 26.2.1998 by this Court. Against this order a

Special Appeal No. 269 of 1998 had been filed which was pending consideration, in the meanwhile the Executive Engineer served a charge-sheet

on 2.6.1998 to the petitioner, expected reply of petitioner by 30.6.1998. The detail reply was filed by the petitioner in the extended time. It

appears after submission of the reply, removal order dated 20.11.1998 was passed (Annexure 14 to the writ petition) based on the Enquiry

Report dated 23.5.1998 with indications that the petitioner had prepared forged documents in respect of his initial appointment to the post of

Seenchpal and had managed forged signature and seal of officers in his service record to get the posting in the District Deoria and subsequently

managed his transfer fraudulently on forged transfer orders dated 12.8.1998, as if issued by Chief Engineer.

7. The counter-affidavit has been filed on behalf of the respondents indicating that the petitioner was never appointed on 15.10.1987, as alleged by

him rather he manufactured false and fabricated documents of appointment and in an enquiry made in this respect the Executive Engineer Seenchai

Khand-II, Deoria by his letter No. 178/Seenchai-2E-9, dated 22.1.1998 had informed that the Office Order No. 44/87 and the letter No. 2738,

dated 15.10.1987 in question was never issued from his office. According to the Executive Engineer in the dispatch register 3/87 to 8/87 (Page

Nos. 6 to 288) on Page No. 165 the last letter was issued on 31.12.1987 by Letter No. 2640. It was further clarified that for the year, the office

order at Serial No. 1 and continued upto Serial No. 381, dated 6.8.1998 and the Office Order No. 44/87 (85-86) allegedly purported to have

been issued by Letter No. 1913 of the Executive Engineer on 11.7.1985 was never issued for the petitioner. According to Para 5 of the counter-

affidavit, Sri Anand Mohan Prasad, Assistant Engineer by a Letter No. 271/Memo, dated 27.1.1998 to the Executive Engineer and on personal

contract obtained the specimen signature of Sri R.K. Pandey, Superintending Engineer (copy of which is Annexure CA-2 to the writ petition)

which on a comparison apparently differs to the forged signature of Sri R.K. Pandey shown by the petitioner in his service book.

8. On the first page of the service book of the petitioner there appears to be the signature of Assistant Engineer, IInd, Seenchai Khand II, Deoria

as at the relevant time in the year 1987, one Sri Azaz Alam was working as a Assistant Engineer after transfer of Sri Azaz Alam, was now working

at Fatehpur, an Inquiry Committee consisting of Mr. R.K. Mishra, when contacted to Sri Azaz Alam, the later by his Letter No. 22/Sa.Aa.III,

dated 9.3.1998 along with his three specimen signatures informed that the alleged signature is not his signature.

9. In respect of verification of Service Book and regarding payment from 3.11.1987 to 31.8.1988, the Executive Engineer, Seenchai Khand-II,

Deoria by his Letter No. 178/Se.Sa-2/Deoria/E-9, dated 22.1.1998 informed that no salary was paid to the petitioner during above period.

10. It has been contended on behalf of the respondents that in respect of alleged transfer of petitioner from Deoria to Narainpur one Sri Indrasena

a Staff Officer (E-4-Kha) by his D.O. Letter No. 373 (E-4-Kha), dated 31 3.1998 has informed that the Letter No. 5555/E-4-Kha-B-2003-

E/Sa. Estha/87-88, dated 12.8.88 was never issued from his office and established that transfer order dated 12.8.1988 was forged one and by

subsequent forged transfer order the petitioner came to Narainpur Head Work Division, Varanasi Seenchpal from Deoria on 7.11.1988. It has

also been pointed out in the counter-affidavit that full fledged enquiry was conducted by the Inquiry Officer and the appeal lies before the Chief

Engineer against the order dated 20.11.1998 and thereafter before the Public Service Tribunal. In these circumstances writ petition filed by the

petitioner is liable to be dismissed.

11. Through, the rejoinder-affidavit filed on behalf of the petitioner, the petitioner has tried to built a case, that after the appointment and different

transfer orders having been made and after allowing him to appear in the examination of promotion in the post of Seenchai Parivekshak his initial

appointment and subsequent steps are treated to be legalised by the State Government.

12. It has been submitted on behalf of the petitioner as follows :-

(A) The two inquiries were held earlier in regard to the validity of the petitioner''s appointment. The first report was made on 12.4.1993 by the

Executive Engineer, Deoria, after making inquiries. (Annexure No. 4 to the writ petition). It was found that the petitioner''s appointment was

perfectly valid. Again on 12.9.1994, the Executive Engineer, Deoria (Annexure No. 6 to the writ petition) reported to the Superintending Engineer

that the petitioner''s initial appointment was perfectly valid. Thus, after two inquiries it was found that the petitioner''s appointment was perfectly

valid and thus, the two reports could not be ignored without giving any opportunity of hearing to the petitioner.

(B) On 24.7.1993, the petitioner was made permanent with effect from 7.2.1991 after holding an inquiry in regard to the validity of the petitioner''s

initial appointment.

(C) The Chief Engineer has been dictating the Subordinate Authorities for suspending the petitioner and for taking action. (Annexure No. 9 to the

writ petition). In fact, the Chief Engineer ought not to have dictated his Subordinate Authorities for taking action against the petitioner. This meant

that the orders of suspension and dismissal were passed on the dictation of the Superior Authority and it became ipso facto illegal, for which the

petitioner has placed reliance on Anirudhsinhji Jadeja and another Vs. State of Gujarat,

(D) In reference to the infringement of natural justice the petitioner has submitted that in the instant case only a charge-sheet was submitted to the

petitioner. (Annexure No. 11 to the writ petition). The petitioner replied to the charge-sheet (Annexure No. 12 to the writ petition). Thereafter,

there was absolutely no inquiry of any sort and the petitioner was never taken into confidence. He did not know anything about the inquiry itself.

No witness was ever examined by the opposite parties in the presence of the petitioner. The opposite parties had the duty to inform the petitioner

about the date, place and other details of the inquiry, but nothing of the sort was done. It appears that some sort of ex-parte inquiry was done by

the opposite parties without the participation of the petitioner in the inquiry. Thereafter, the impugned order of dismissal was passed. Paragraph

No. 16 of the writ petition has not been replied at all by the opposite parties and in a very cursory manner it has been stated that a full-fledged

inquiry was done (in Paragraph 15 of the counter-affidavit). There was a blatant violation of the principles of natural justice. It was the duty of the

respondents to have allowed the petitioner to participate in the inquiry. The petitioner had to be taken into confidence before an inquiry report was

given. No such thing was ever done. In the instant case, the petitioner only knows this much that he was given a charge-sheet and he replied to it

and thereafter the order of dismissal was passed. (Annexure No. 14 to the writ petition). In this respect the petitioner has placed reliance on

Neeraj Bharadwaj Vs. Marathwada Institute of Technology and Others, ; (2001) 1 UPLBEC 908 , Basudeo Tiwary Vs. Sido Kanhu University

and Others, Basudeo Tiwary v. Sido Kanhu University and others.

(E) According to the petitioner he was not supplied with a copy of the Inquiry Report, which had been prepared ex-parte, without giving an

opportunity of hearing to the petitioner and without the petitioner''s participation in the inquiry. This also was an infringement of the principles of

natural justice. The Inquiry Report was relied upon by the Disciplinary Authority while removing the petitioner and thus, it was the bounden duty of

the Disciplinary Authority to have heard the petitioner after giving the Enquiry Report. The Inquiry Report was prepared in an ex-parte manner by

one D. Singh, and the order of dismissal was passed by one R.P. Singh and thus, there were two entities. The Inquiry Officer as well as the

Disciplinary Authority were not one and the same person as referred in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

(F) If we peruse the dismissal order (Annexure No. 14 of the writ petition) we find that not even point raised by the petitioner in his defence, was

taken into account while passing the order of dismissal.

Basically, the order of dismissal has been passed without giving any opportunity of hearing to the petitioner and thus, there was a gross violation of

the principles of natural justice in every respect possible and thus, it shall be in the interest of justice that the order of dismissal may be set-aside.

Since, there was a violation of principles of natural justice the order this purpose the petitioner has placed reliance on Whirlpool Corporation Vs.

Registrar of Trade Marks, Mumbai and Others,

13. In (2002) 1 UPLBEC 352, Ram Vikas v. State of UP. and Ors., the appointment of employee writ petitioner of Government Medical

Hospital was cancelled on the basis of the alleged irregularities in the selection process and on enquiry made for the purpose by higher authorities

the Government passed order of cancellation of appointment of writ petitioner. Such cancellation of appointment was held illegal and the

appointment was cancelled without any opportunity of hearing to the writ petitioner. This Court in Para 11 has observed, as follows :-

In the present case, since the petitioner has joined and working, the cancellation of his appointment would have adversely affected his right which

required a notice on the issues which have been raised in Enquiry Report dated 20.4.1996, petitioner ought to have given an opportunity to have

his say. May it be, that the petitioner in his reply could not have stated any fact which would have dispelled the charges levelled against the

selection proceedings but justice must not only be done should always seem to be done. In all fairness and in conformity with the principle of

natural justice notice ought to have been given to the petitioners.

The foremost submission which has been raised by the Counsel for the petitioner is regarding the violation of principle of natural justice. Counsel

submitted that the petitioner having already been appointed and working, his appointment could not have been cancelled without notice. Counsel

for the petitioner in support of his submission that notice was required before cancellation of the appointment has placed reliance on the following

cases :

(I) Shridhar Vs. Nagar Palika, Jaunpur and Others,

(II) Shrawan Kumar Jha v. State of Bihar 1991 (Suppl.) (1) SCC 330;

(III) Basudeo Tiwary Vs. Sido Kanhu University and Others,

(IV) Pancham Ram and Others Vs. Chief Engineer, U.P. Jal Nigam and Others, and

(V) Sanjeev Kumar and Ors. v. State of U.P. and Ors. 1999 (1) ESC 754 : (1999) 1 UPLBEC 575.

14. Learned Standing Counsel on the other hand relied on the judgment of the Apex Court in Ashwani Kumar and Others Vs. State of Bihar and

Others, The Apex Court has considered the question of natural justice in large number of cases. In Shridhar v. Nagar Palika, Jaunpur (supra), the

Apex Court held that it is elementary principle of natural justice that no person should be condemned without hearing. In Paragraph it was held:

8. The High Court committed serious error in upholding the order of the Government dated 13.2.1980 in setting aside the appellant''s appointment

without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing.

The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without

affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the

Commissioner''s order had been passed without affording any opportunity of hearing to the appellant, therefore, the order was illegal and void. The

High Court committed serious error in upholding the Commissioner''s order setting-aside the appellant''s appointment. In this view, order of the

High Court and the Commissioner are not sustainable in law.

15. In Shrawan Kumar''s case, was also a case in which appointments were cancelled by the Deputy Development Commissioner on the ground

that the Deputy Superintendent Education had no authority to make appointment. Apex Court held that the impugned order cancelling the

appointment was liable to be quashed on the ground that the appellant therein had not been given opportunity of hearing before cancelling the

appointment. Basudeo Tewary in a case in which in accordance with the provisions of Section 35(3) of the Bihar University Act, 1951 services

were terminated on the ground that the appointment was irregular. Section 35(3) of the Act provides :

35. (3) Any appointment of promotion made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or

unauthorised manner shall be terminated at any time without notice.

16. Exercising the power u/s 35(3) of the Act, order was passed which was challenged before the High Court. In Paragraph 12 of the judgment,

the Apex Court laid down :

12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the

provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power

is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an

appointment is contrary to the provisions of the Act, Statutes, Rules or Regulation etc., a finding has to be recorded an unless such a finding is

recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such

appointment was contrary to the provisions of the Act, etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To

arrive at such a finding necessarily enquiry notice will have to be held and in holding such an enquiry the person whose appointment is under

enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince to Denmark, that is if the

employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a

conclusion would not be just, fair or reasonable as noticed by this Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and

Others, In such an event we have to hold that hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to

the Act, Statutes, Rules or Regulations etc., and it only on such a conclusion being drawn, the services of the persons could be terminated without

further notice. That is how Section 35(3) in this case will have to be read.

The other judgments cited by the Counsel for the petitioner do support the contention of the petitioner that he was entitled for notice before

cancelling his appointment. In the present case, since the petitioner has joined and was working, the cancellation of his appointment would have

adversely affected his right which required a notice on the issues which have been raised in Enquiry Report dated 20.4.1996. Petitioner ought to

have given an opportunity to have his say. May it be, that the petitioner in his reply could not have stated any fact which would have dispelled the

charges levelled, against the selection proceeding but justice must not only be done but should always seem to be done. In all fairness and in

conformity with the principle of natural justice notice ought to have been given to the petitioner. The reliance placed by the learned Standing

Counsel on the case of Ashwani Kumar and others (supra), is not applicable on the facts of the present case. In Ashwani Kumar''s case, the Apex

Court while dealing with the question of natural justice had observed, that the principle of natural justice is observed in that case since public

notices were given to the petitioners of that case and all other employees have submitted their explanations. In the aforesaid case, the High Court

had directed the State Government to appoint the Committee and throughly investigate the entire matter in pursuance of which the Committee

issued notices to all the affected persons and thereafter this after giving opportunity submitted its report. In Ashwani Kumar''s case, against 2500

posts appointments of 6000 persons were made. The Apex Court in that case observed :

Thus, the basis principles of natural justice cannot be said to have been violated by the Committee which ultimately took decision on the basis of

the personal hearing given to the concerned employees and after considering what they had to say regarding their appointments. Whatever was

submitted by the concerned employees was taken into consideration and then Committee came to a firm decision to the effect that all these

appointments made by Sri Malik were vitiated from the inception and were required to be set-aside and that is how impugned termination orders

were passed against the appellant. On the facts of these cases, therefore, it cannot be said that principles of natural justice were violated or full

opportunity was not given to the concerned employees to have their say in the matter and before their appointments were recalled and terminated.

17. In State of U.P. Vs. Shatrughan Lal and Another, , it was held:

One of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing.

This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the

documents which are pronosed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in

spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was

provided to him (Para 4).

Preliminary Inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-

sheet. Before a person is, therefore, called upon to submit his '' reply to the charge-sheet, he must on a request made by him in that behalf, be

supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be

examined at the department trial. (Para 6)

Merely saying, that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of

which the copies were asked for by him may be inspected. The access to record must be assured to him. The respondent was not afforded an

effective opportunity of hearing particularly as the appellant failed to establish that non-supply of the copies of statements recorded during

preliminary enquiry had not caused any prejudice to the respondent in defending himself. (Paras 8 and 10)''

18. In State of Andhra Pradesh Vs. N. Radhakishan, it was held:

In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what

account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the fact of it. It could also be seen

as to how much Disciplinary Authority is serious in pursuing the charges against its employee. Disciplinary proceedings should be allowed to take

its course as per relevant rules but, then delay defeats justice. Delay causes prejudice to the charged officer unless, it can be shown that he is to

blame for the delay or when there is proper explanation for the delay, in conducting the disciplinary proceedings. Ultimately, the Court is to balance

these two diverse considerations. (Para 19)

It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the

disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and

circumstances in that case. The essence of the matter in that the Court has to take into consideration all relevant factors and to balance and weigh

them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after

delay particularly when delay is abnormal and there is no explanation for the delay. (Para 19)

Charges have been framed against the respondent merely on the basis of the report dated November 7, 1987 from the Director General, Anti-

Corruption Bureau, which is of general in nature raising accusing fingers on the various officers of the Corporation, but without any reference to the

relevant files and pin pointing if respondent or any other official charged was at all concerned with the alleged deviations and unauthorised

construction in multi-storied complexes. (Para 15)

If memo of charge had been served for the first time before 1991, there would have been no difficulty. However, in the present case, it could be

only on irregularity and not an illegality vitiating the inquiry proceedings in as much as after the Inquiry Officer was appointed under Memo No.

1412, dated December 22, 1987, there had not been any progress. If a fresh memo is issued on the same charges against the Delinquent Officer it

cannot be said that any prejudice has been caused to him. (Para 17)

The case depended on records of the Department only and Director General, Anti Corruption Bureau had pointed out that no witnesses had been

examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the

alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against

the bye-laws. It is no body''s case, that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not

accept the explanations of the State as to why delay occurred. In fact, there was hardly any explanation worth consideration. In the circumstances,

the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the State to promote the respondent as per

recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. (Para 20)

19. It is also relevant to note that in Krishan Yadav and another Vs. State of Haryana and others, , where the selection of Taxation Inspectors was

cancelled because the selection process was stinking, conceived in fraud and delivered in deceit, therefore, cancellation of the entire selection was

upheld and the plea of innocence of selectees found not tenable and selectees were not required to repay salary and perks. It was observed in

Krishan Yadav (supra), as below:-

As regards the selection made without interview, fake and ghost interview, tempering with the final records, fabricating documents, forgery, an

inference that all was motivated by extraneous considerations can be drawn. The entire selection, thus, is arbitrary and is liable to be set-aside. The

plea that innocent candidates should not be penalised for the misdeeds of others in not applicable to such cases. The effect of setting-aside the

selection would mean the selectees will have no right to go to the office. Normally, they will have to repay the entire salary and perks which they

have received from the said office. The Court however refused to order repayment in this case.

20. In Ashwani Kumar and Others Vs. State of Bihar and Others, , where the recruitment in T.B. Eradication Programme of State Government to

the post of Class-Ill and Class-IV employee made in derogation to the prescribed procedure for the recruitment laid down by the State

Government and without sanctioned post backed by financial budged approval was found ex-fade illegal and not binding on the State Government

and was found not contradictory to the provisions of Article 16 of the Constitution and the employees so recruited and for regularisation in service

were treated to be illegal in respect of their entry into service and as a total disregard of recruitment rules or being not on existing vacancy, as such

no case of regualrisation was possible. The Supreme Court in Ashwani Kumar (supra), observed, as below:-

13. In this connection it is pertinent to note that question of regularisation in any service including any Government service may arise in two

contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad-hoc basis or daily wage basis

by a Competent Authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for

a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time

may come in the service career or such employees who are continued on ad-hoc basis for a given substantial length of time to regularise them so

that the concerned employees can give their best by being assured security of tenure. But, this would require one precondition that the initial entry

of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The

second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available

vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial

recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative

requirement for waiving such irregularity in the initial appointment by Competent Authority and the irregular initial appointment may be regularised

and security of tenure may be made available to the concerned incumbent. But, even in such a case, the initial entry must not be found to be totally

illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case, back door entries for filling up such

vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose

initial entry is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial

entry of the candidate could even be effected. Such an entry of an employee would remain tainted from the very beginning and no question of

regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be. The appellants fall in this

latter class of cases. They had no case for regularisation and whatever purported regularisatiori was effected in their favour remained an exercise in

futility.

16. So far as the principles of natural justice are concerned it has to be stated at the outset that principles of natural justice cannot be subjected to

any strait - jacket formula. They will vary from case to case, from circumstance to circumstance and from situation to situation. Here is a case, in

which 6000 employees were found squatting in the Tuberculosis Scheme controlled and monitored by Dr. Mallick for the entire State of Bihar and

there was no budgetary sanction for defraying their expenditure. At least out of 6000 employees as seen earlier 3750 were totally unauthorised and

were squatting against non-existing vacancies. A grave situation had arisen which required immediate action for clearing the stables and for

eradicating the evil effects of these vitiated recruitments so that the Tuberculosis Eradication Scheme could be put on a sound footing.

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Whatever was submitted by the concerned employees was taken into consideration and then the Committee came to a firm decision to the effect

that all these appointments made by Dr. Mallick were vitiated from the inception and were required to be set-aside and that is how the impugned

termination orders were passed against the appellants. On the facts of these cases, therefore, it cannot be said that principles of natural justice were

violated or full opportunity was not given to the concerned employees to have their say in the matter before their appointments were recalled and

terminated. Point No. 3 is, therefore, answered in the terminated.

17.....The initial entry of the employees is itself unauthorised being not against sanctioned vacancies nor was Dr. Mallick entrusted with the

power of creating vacancies or posts for the schemes under the Tuberculosis Eradication Programme. Consequently, the termination of the

services of all these appellants cannot be found fault with. Nor any relief as claimed by them of reinstatement with continued service can be made

available on them.

21. In JT 2000 2 SC 417, Nazira Begum Lashkar and Ors. v. State of Assam and Ors., the Supreme Court has held that the persons appointed

as Assistant Teachers in Primary Schools when no post was advertised and without following statutory rules, without constituting Selection

Committee and without holding interviews, are not entitled to claim any legal right for any appointment. In Nazira Begum Lashkar (supra), the

Supreme Court has also considered in Para 10 as below :-

10.....In Ashwani Kumar and Others Vs. State of Bihar and Others, , so that while considering these Teachers for the posts pursuant to the

directions of the Division Bench of the High Court, due weightage should be given for the experience gained by these Teachers who had been

teaching for a number of year. In support of this contention, Mr. Parikh also relied upon a decision of this Court in Arun Kumar Rout and Others

Vs. State of Bihar and Others, wherein this Court had indicated that the appointees deserve sympathetic consideration in getting appointment

against sanctioned posts on humanitarian consideration. The learned Counsel also placed reliance on the judgment of this Court in H.C.

Puttaswamy and others Vs. The Hon''ble Chief Justice of Karnataka High Court, Bangalore and others, whereunder this Court reviewed the

earlier orders of the Court and treated the services of the appointees to be regularly appointed.

In sequence to the observations, the Supreme Court has also considered in Para 14 as below:-

14. In view of different submissions made by different sets of Counsels, as referred to earlier, we have examined in detail the report of the Inquiry

Committee as well as different orders passed by the High Court and it appears to us that no special case had been made out by the appellants in

C.A. No. 296/99, C.A Nos. 279-285/99 and C.A. No. 286/99 in their writ petitions before the High Court, making out a case, that these

appointments had been made under a special project called ""Operation Black Board"" and as such, the provisions of the Recruitment Rules need

not be complied with and the appointments had been bona fide made by the Competent Authority and the appointees possess the requisite

qualification. Even in the SLP in this Court, no such stand has been taken. In this view of the matter, we are constrained to agree with the

conclusions of the Division Bench of the High Court that the appointments were made to posts of Assistant Teachers of Primary Schools and such

appointments are governed by the statutory Recruitment Rules, which Rules have been framed by the Governor in exercise of the power conferred

under the Assam Elementary Education (Provincialisation) Act, 1974. We also do not find any substance in the argument of Ms. Indu Malhotra

that the appointments made in C.A. No. 295/99 were in substantial compliance of the Recruitment Rules in as much as the judgment of the

Division Bench clearly indicates that the Counsel appearing for the Teachers conceded that the appointments had been made on the vacant posts

but the same were not done in accordance with the provisions of Rule 3 of the Rules of 1977. In view of the aforesaid concession of the appellants

through their Counsel before the Division Bench, it would be difficult for us to entertain the contention of Ms. Indu Malhotra that there has been

substantial compliance of the provisions of the Recruitment Rules. As has been stated earlier, while the matter was pending before the Division

Bench, the Court was persuaded to appoint an Inquiry Committee, in view of the allegations of gross irregularities and illegalities committed in the

matter of appointment of Teachers in different Primary Schools in different Districts. The said Committee has gone into details and recorded

findings that the provisions of the Recruitment Rules have not at all been followed. The High Court has even gone to the extent of recording a

finding that there has been no selection, no interview or even fake or ghost interviews and there has been tampering of records and fabricating of

documents. Since, the appointments to the posts are governed by a set of statutory rules, and the prescribed procedure therein had not been

followed and on the other hand, appointments have been made indiscriminately, immediately after posts were allotted to different Districts at the

behest of some unseen hands, such appointments would not confer any right on the appointee nor such appointee can claim even any equitable

relief from any Court. That apart, the appointments stood annulled hardly after six months from the date of appointments and the appointees cannot

claim to be continuing for an unusually long period, so as to claim a humanitarian consideration in their case. The decisions cited by Mr. Parikh, in

support of his contention, not only do not support his contention but on the other hand appear to us to be against his contention. In Ashwani

Kumar and Others Vs. State of Bihar and Others, this Court in no uncertain terms held that as the appointments had been made illegally and

contrary to all recognised recruitment procedures and were highly arbitrary, the same were not binding on the State of Bihar. This Court further

went on the hold in the aforesaid case, that the initial appointments having been contrary to the statutory rules, the continuance of such appointees

must be held to be totally unauthorised and no right would accrue to the incumbent on that score. The Court had also held that it cannot be said

that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before

their appointments were recalled and terminated. But, while dismissing the appeals, the Court had issued certain directions as to how the

appointments should be made in future and how the case of the illegally recruited Teachers should be dealt with. In the facts and circumstances of

the present case, we are unable to persuade ourselves to give any such direction.

22. In U.P. Junior Doctors'' Action Committee Vs. Dr B. Sheetal Nandwani and Others, , where for getting admission in Post Graduate Course

fake judgment of High Court aborting entrance examination produced, pursuant to which order issued by the High Court cancelling examination

and directing State Government to grant admission on the basis of M.B.B.S. results, bogus judgment was found not existent and order issued

pursuant thereto having been made on the basis of misrepresentation was set-aside. The Supreme Court in Para 5 observed as below:-

5.....We are satisfied that there is a deep-seated conspiracy which brought about the fake order from Allahabad, the principal seat of the

High Court and on the basis thereof a subsequent direction has been obtained from the Lucknow Bench of the same High Court. The first order

being non-existent has to be declared to be a bogus one. The second order made on the basis of the first order has to be set-aside as having been

made on the basis of misrepresentation. We are alive to the situation that the persons who have been taken admission on the basis of the MBBS

results are not before us. The circumstances in which such benefit has been taken by the candidates concerned do not justify attraction of the

application of rules of natural justice of being provided an opportunity to be heard,.....

23. I have heard learned Counsel for the parties. I, find that in view of the serious allegations against the selection grave doubt has been raised with

regard to the selection, appointment and alleged involvement of forgery on the part of the petitioner, although the order dated 20.11.1998 is not

legally sustainable for lack of providing opportunity of natural hearing, therefore, it is directed that before the petitioner is permitted to join the post

a decision is to be taken by the Competent Authority on issues raised after giving proper opportunity to the petitioner. In view of the above I direct

the Chief Engineer of Anusandhan Avam Niyojan, Jal Sansadhan Prakhand, Varanasi to issue a notice to the petitioner regarding the allegation

against the selection and alleged forgery in the appointment and after considering the records, documents and earlier enquiry and explanation and

material submitted by the petitioner take a proper decision in the matter. If the petitioner wants oral hearing he may be allowed to do so and if

petitioner gives only written statement submission that would be treated to be sufficient that he has been heard properly. The petitioner''s

continuance to the post and providing other benefits will depend upon the decision to be taken by the Chief Engineer of the above department. The

Chief Engineer will issue proper notice to the petitioner within a period of two months from the date of receipt of certified copy of this judgment

and after receiving the explanation from the petitioner after hearing the petitioner, after providing opportunity of hearing or after considering the

written submission of the petitioner shall pass final order within a period of six months from today.

24. With these observations the order dated 20.11.1998 is set-aside and with the above observations and directions the writ petition is finally

disposed of.