A.F.R.

Court No.39

Case :- SPECIAL APPEAL DEFECTIVE No. - 799 of 2013

Appellant :- State Of U.P . Thru' Principal Secry. And 4 Others
Respondent :- Durvijay Singh
Counsel for Appellant :- A.K Roy,S.C.
Counsel for Respondent :- R.N. Singh

Hon'ble Dilip Gupta, J.
Hon'ble Vinod Kumar Misra, J.

This Special Appeal has been filed against the judgment dated 9 April 2013 of a learned Judge of this Court by which Writ Petition No. 17742 of 2009 that was filed by the sole respondent in this Special Appeal to assail the orders rejecting the representations, was allowed and a direction was issued to the respondents for giving light duty, as was advised by the Medical Board, to the writ petitioner.

The writ petitioner-Durvijay Singh had raised a grievance that though he was working as a Warder in District Jail at Gorakhpur, he was not being paid salary from 13 December 2007. Writ Petition No. 11810 of 2008 that was filed by him for claiming the aforesaid relief was dismissed by a learned Judge of this Court on 7 March 2008 for the reason that a second petition for the same cause of action would not be maintainable and also for the reason that a statement had made by the learned Standing Counsel that the writ petitioner had obtained employment on the basis of a fake appointment letter and an enquiry was pending before the CBCID. In the Special Appeal that was filed by Durvijay Singh to assail this order, a statement was made on behalf of the writ petitioner that he had

filed a representation before the Superintendent of District Jail on 7 January 2008 in regard to the grievance that was made in the writ petition. The judgment of the learned Judge was substituted by the Division Bench by directing the respondents to decide the representation. The writ petitioner filed a comprehensive representation on 22 May 2008 which was rejected by the Senior Superintendent of District Jail, Gorakhpur by order dated 4 June 2008. This order was assailed in Writ Petition No.30630 of 2008, which petition was dismissed on the ground that the writ petitioner had an alternative remedy. The writ petitioner then filed a representation before the Inspector General (Jail) on 13 August 2008. This representation was transferred to the Deputy Inspector General (Prison) and was ultimately rejected by order dated 26 September 2008. These orders dated 4 June 2008 and 26 September 2008 rejecting the representations filed by the writ petitioner were assailed in Writ Petition No.17742 of 2009, which petition has been allowed by the impugned judgment.

The writ petitioner had alleged that he had been appointed as a Warder by order dated 24 December 1986 at District Jail, Fatehgarh and posted as a Warder at Sampurnanand Shivir, Sitarganj on 7 January 1987 from where he was transferred to Central Jail at Varanasi on 22 March 1990, then transferred to District Jail, Basti on 24 March 1990 and ultimately transferred to District Jail at Gorakhpur on 29 April 1995. Three Warders namely, Shatrujeet Shahi, Santosh Kumar Singh and Umakant, at the time of joining at District Jail at Gorakhpur, were asked

to write applications by the Jailor but as they could not even write the applications, inquiries were made and thereafter on 31 May 2007, a First Information Report under Sections 419, 420, 467 and 471 of the Indian Penal Code was lodged at Police Station Gorakhpur which was registered as Case Crime No.366 of 2007 against these persons for seeking appointments on the basis of forged orders. Inquiries were also made against other Warders posted at Gorakhpur regarding their appointments/ postings. A letter dated 1 June 2007 was sent to the Appointing Authority of the petitioner mentioned in the service book, namely the Senior Superintendent Central Jail, Fatehgarh, seeking information regarding the appointment order of the petitioner. In reply, the Senior Superintendent, Fatehgarh sent a communication dated 2 June 2007 that the writ petitioner and 13 other persons, who were working in the Central Jail, Gorakhpur as Warders, had never been appointed in the Central Jail, Fatehgarh. In the appointment order and the service book of the writ petitioner, it was mentioned that he had joined as a Warder on 7 January 1987 at Sampurnanand Shivir at Sitarganj and that he had been granted an annual increment while he was working from 7 January 1987 to 22 March 1990 at that place. Information was, therefore, also sought from the Senior Superintendent, Sampurnanand Shivir at Sitarganj regarding this fact. In response thereto, by letter a dated 1 September 2007, information was provided that the writ petitioner had never joined as a Warder nor was he ever posted over there. On further inquiries, it was found that the writ petitioner had submitted forged documents regarding joining and

working as a Warder and the GPF passbook, LPC, service book and the appointment order were all forged documents. In fact, there were 35 other Warders who had submitted forged documents. A First Information Report was, therefore, lodged against the writ petitioner under Sections 419, 420, 467 and 471 of the Indian Penal Code. It is stated that when these facts came to the notice of the authorities, the writ petitioner and other Warders, whose appointments were found to be forged, attacked the officer at his residence in the night of 12/13 June 2007 and bombs were also thrown as a result of which another First Information Report under Section 307 of the Indian Penal Code was also lodged which was registered as Case Crime No.402 of 2007.

It is on a consideration of the aforesaid facts that the first representation filed by the writ petitioner was rejected by the Senior Superintendent by order dated 4 June 2008. The subsequent representation filed pursuant to the order dated 3 July 2008 passed in Writ Petition No.30630 of 2008 was also rejected by the Deputy Inspector General (Prison) by order dated 27 September 2008. These orders were assailed in Writ Petition No.17742 of 2009. This petition was allowed by the learned Judge on 9 April 2013 with the following observations:-

> "Thus from the documents on record, it will be seen that even when the case was being contested before the learned Single Judge in writ petition no.26390 of 2003, which was disposed of by order dated 26.4.2005, it was never the case of the respondents that the petitioner had obtained appointment by forged documents. Even in the Special Appeal no such objection was taken by the respondents. The Division Bench had allowed the Special Appeal with a direction to the respondents to

> consider the representation of the petitioner regarding his joining and to pay his salary as he had suffered paralysis and had become disabled. The Medical Board had also expressed the view that heavy physical work should not be taken from the petitioner and only light duty should be taken from the petitioner. Learned Single Judge while deciding the writ petition no.26390 of 2003 had also directed that the petitioner shall be immediately taken back on duty and given light physical work as opined by the Medical Board. Therefore, the question that the very appointment of the petitioner was obtained by practising fraud was never taken before any Court. This question has been raised for the first time in the impugned orders dated 4.6.2008 and 26.9.2008 while rejecting the representations of the petitioner for being taken back on duty. Even if it is assumed that the appointment of the petitioner was obtained by practising fraud his services should not have been terminated without holding proper departmental enquiry giving the petitioner full and adequate opportunity to defend himself. This has not been done. Therefore, the impugned orders dated 26.9.2008 and 4.6.2008 are not sustainable in law and are accordingly quashed.
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> The writ petition is allowed.
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> The respondents are directed to take a decision for giving the petitioner light duty as advised by the Medical Board. The decision in this regard will be taken within a period of one month from the date a certified copy of this order is received by the Competent Authority."

It needs to be stated that Writ Petition No.26390 of 2003 had earlier been filed by the writ petitioner as punishment of stoppage of one increment was imposed upon the petitioner. The writ petition was disposed of on 26 April 2005 with a direction that since the writ petitioner had been declared fit by the Medical Board, he would be entitled to perform work and would also be paid salary. A further direction was issued that the writ petitioner should be taken on duty and offered a position which may not adversely affect his health.

Learned Standing Counsel appearing for the appellants has submitted that as the writ petitioner had submitted a forged appointment order dated 24 December 1986 at District Jail Fatehgrah and was posted as a Warder on 7 January 1987 at Sampurnanand Shivir at Sitarganj and had also submitted fake joining reports and transfer orders while submitting his joining at Gorakhpur, the representations filed by the writ petitioner had rightly been rejected but the learned Judge failed to take into consideration these facts. It is his contention that it is only in 2007 that facts regarding forged appointment order/transfer orders came to the knowledge of the authorities and, therefore, these facts could not have been brought to the notice of the Court in the earlier Writ Petition No.26390 of 2003 filed by the writ petitioner that was decided on 26 April 2005. However, the Court had been informed by the learned Standing Counsel when Writ Petition No.11810 filed by the writ petitioner was being decided on 7 March 2008 that the writ petitioner had obtained employment on the basis of the forged appointment letter and this fact was also noticed by the Division in its judgment dated 7 May 2008 in Special Appeal Defective No.423 of 2008 which was filed against the judgment dated 7 March 2008. It is, therefore, the submission of the learned Standing Counsel that the learned Judge was not justified in observing in the impugned judgment that even in the Special Appeal no objection was raised by the learned Standing Counsel.

Learned counsel for the writ petitioner, however, submitted that the allegations of submitting forged documents/transfer orders by the writ

petitioner are without any basis and in this connection learned counsel has relied upon the entries made in the service book. It is his contention that false allegations have been made against the writ petitioner only for the reason that he had earlier filed writ petition which was allowed and a direction was issued for payment of salary to him. Learned counsel submitted that it was not possible for the department to make any allegations about the submission of forged documents without holding a disciplinary enquiry. Learned counsel for the writ petitioner also contended that the Special Appeal would not be maintainable as it has been filed against an appellate order.

We have considered the submissions advanced by the learned counsel for the parties.

The contention of the appellants is that the writ petitioner had never been appointed as a Warder and it is only on the basis of a forged appointment order that he claims that he was initially appointed as a Warder at District Jail Fatehgarh and posted at Sampurnanand Shivir in Sitarganj on 7 January 1987 where he worked upto 22 March 1990. On inquiries, it was found that neither any appointment order was issued nor he had actually joined or worked at Sitarganj and it is only on the basis of forged transfer orders that he subsequently joined at the other places. In the supplementary affidavit, details have been given regarding the forged entries made in the service book submitted by the writ petitioner. Paragraphs 19 to 25 which are relevant are reproduced below:

> "19. That as shown in forged service book at page 16 the first appointment of respondent no.1 is made by

Senior Superintendent Central Jail, Fatehgarh vide order no.165 dated 24.12.1986 page no.1107/Niyukti dated 28.12.1986 and on 7.1.1987 was shown to have joined at Sampurnanand Shivir Sitarganj, Nainital whereas on the verification of original record page 110 Order No.165 dated 1.4.1986 in which it is stated that "Shri Cheda Lal, Reserve Bandi Rakshak ko Reserve Pradhan Bandi Rakshak Pad Par …. Ankit Ho.". Hence on verification the respondent no.1 is not stated to have been appointed as Bandi Rakshak and the documents, service book are found to be forged. Photostat copy of Order No.165 dated 1.4.1986 is annexed.

20. That on page 63 of Guard File vide letter No.590, Senior Superintendent District Jail, Gorakhpur has written a letter to Senior Superintendent, Central Jail, Fatehgarh for enquiry and verification of appointment of Bandi Rakshak. Photostat copy of Page 63 of Guard File is annexed.

21. That at page 88 of Guard File there is a report regarding enquiry of appointment of Bandi Rakshak. Letter was sent by Senior Superintendent Central Jail, Fatehgarh to Senior Superintendent, District Jail, Gorakhpur. The Senior Superintendent, Central Jail, Fatehgarh after verifying the records submitted that as per Register of Adhisthan no such orders of appointment have ever been passed. Photostat copy of letter No.532 dated 2.6.2007, stating details of forged appointments of Bandi Rakshak as enquired vide Letter no.2.6.2007 is annexed.

22. That vide letter No.269-70 dated 13.8.2007, Senior Superintendent District Jail, Gorakhpur has written a letter to Senior Superintendent, Sampurnanand Shivir Sitarganj, Nainital to verify the entries from service record of the alleged/forged Bandi Rakshak including that of respondent no.1. Photostat copy of letter dated 13.8.2007 is annexed.

23. That Senior Super Sampurnanand Shivir Sitarganj, Uttarakhand vide letter dated 1.9.2007 confirmed the forged entires in service records clearly stating therein. Photostat copy of page No246 is annexed.

> 24. That is is relevant to submit here that if the respondent no.1 is stated to have started his services from Fatehgarh and then from Sitarganj there ought to have been G.P.F. pass book or payment of salary record but when payment register was perused from 1986 onwards there is no entry of payment either of Rs.50/- as contribution towards G.P.F. nor there is salary register that of the respondent no.1 are forged and fabricated. Photostat copy of pay bill/salary register from 1986 onwards is annexed.
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> 25. That even in form-1 Ledger showing the contribution of an employee towards G.P.F. there is no entry of that of respondent no.1 or other Bandi Rakshak whose appointments are based on forged and fabricated documents. Photostat copy of Form-1 Ledger for the year 1987 onwards is annexed."

Learned counsel for the writ petitioner, on repeated queries, could not place any document which would show that salary was ever paid to the writ petitioner during the period he claims that he had worked prior to his posting at Gorakhpur.

The order dated 4 June 2008, by which the representation filed by the writ petitioner on 22 May 2008 pursuant to the direction issued by a Division Bench of this Court in the Special Appeal filed by the writ petitioner was rejected, mentions the facts which have been narrated above. The decision dated 27 September 2008 by which the second representation was decided has also noticed these facts. These facts were certainly required to be taken into consideration by the learned Judge but all that has been observed is that a new case had been taken up that the writ petitioner had obtained appointment on the basis of forged documents. In this connection, the learned Judge also observed that when Writ Petition No.26390 of 2003 was disposed of on 26 April 2005, the

respondents had not raised any plea about forged appointment orders and even in the Special Appeal, such objection was not taken. It needs to be noted that it is only in 2007 when facts came to the notice of the department that the writ petitioner had managed to get appointment by producing a forged appointment order and, therefore, such a plea could not have been taken by the appellants in response to the earlier writ petition filed by the writ petitioner in 2003 which was decided on 26 April 2005. However, these facts had been brought to the notice of the Court when Writ Petition No.11810 of 2008 was being decided as is clear from the judgment dated 7 March 2008 which is reproduced below :

> "Heard learned counsel for the parties.
>
> Prayer of the petitioner in the present writ petition is to issue a writ order or direction in the nature of mandamus commanding the respondents to permit the petitioner to discharge his duties on the post of Bandi Rakshak in District Karagar, Gorakhpur and to release his salary month to month without any break.
>
> Petitioner claims that he is Bandi Rakshak. He had an attack of paralysis but subsequently he had recovered from the same but even then duties were not assigned to him and he was not paid salary w.e.f. 23.4.2003. Petitioner had earlier filed a Civil Misc. Writ Petition No.26390 of 2003. The said writ petition was decided vide judgment and order dated 26.4.2005 and the following directions were issued :-
>
> (i) That the petitioner be paid full salary for the period of suspension as per decision of the appellate authority within a period of three months from the date of the production of the certified copy of the order; and
>
> (ii) That the petitioner shall immediately be taken on duty and offered a position which may not adversely affect his health at the discretion of the Senior Superintendent of District Jail, Gorakhpur and be paid his salary.
>
> A perusal of the aforesaid judgment and order of the Court indicates that the second direction was

> issued by the Court after considering the grievance of the petitioner that he has not been allowed to resume duties w.e.f. 23.4.2003. This is precisely the grievance of the petitioner in the writ petition also. It is acknowledged principle of law that a person cannot maintain successive writ petitions with regard to the same grievance or the cause of action. With regard to the grievance of not assigning duties w.e.f. 23.4.2003 this Court had previously issued adequate directions for the redressal of the same and therefore the prayer to this effect made in the instant writ petition is nothing but an abuse of the process and is misconceived.
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> **It will not be out of context to mention here that the learned Standing Counsel on the basis of the instructions has also pointed out that the petitioner and 12 others persons are said to have worked as Bandi Rakshak on the basis of the fake appointment letters and in that connection an enquiry is pending before the CBCID**. Be as it may be, in view of the aforesaid facts and circumstance, no comments are necessary on the above aspect of the matter.
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> The second writ petition raising the same grievance is not maintainable. The writ petition is accordingly dismissed with costs."
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> (emphasis supplied)

The Division Bench, while deciding Special Appeal Defective No.423 of 2008 on 7 May 2008 that was filed to assail the aforesaid judgment dated 7 March 2008, also noticed this fact and the judgment is reproduced below:

> "1. Heard Sri Rajesh Kumar in support of this appeal. Sri Grish Upadhyay, learned Standing Counsel for the State of U.P. appears for the respondents.
>
> 2. The appellant is working as a Bandi Rakshak (Warder) in District Jail at Gorakhpur. It is the grievance of the appellant that he is not being paid his salary from 13.12.2007. **The appellant filed a petition which has been dismissed by the learned Single Judge on the basis of a statement made by the learned Standing Counsel for the State of U.P. that the appellant had obtained his employment on**

> **the basis of fake appointment letter**. Sri Rajesh Kumar, learned counsel for the appellant, denies this allegation. In any case he submits alternatively that the appellant has made a representation to the Superintendent of District Jail on 7.1.2008 for allowing him to join back and to pay his salary. The appellant has been working in the jail since 1987. Subsequent to his joining, it appears that he has suffered paralysis and he is somewhat a disabled person.
>
> 3. The authorities of the respondents must take a proper view of the matter. We expect them to decide the representation within three weeks from the date of receipt of a copy of this order. This order will be substituted in place of the order passed by learned Single Judge.
>
> 4. With this order, this appeal stands allowed to the extent indicated above."
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> (emphasis supplied)

What, therefore, transpires from the records and the averments made in the affidavit is that :

(i) In the service book at page 16, the first appointment of the writ petitioner is shown to have been made by the Senior Superintendent Central Jail, Fatehgarh vide order no.165 dated 24 December 1986 and on 7 January 1987 he is shown to have joined at Sampurnanand Shivir Sitarganj, Nainital whereas on verification of the original record, Order No.165 dated 1 April 1986 mentions that 'Shri Cheda Lal, Reserve Bandi Rakshak ko Reserve Pradhan Bandi Rakshak Pad Par Ankit Ho';

(ii) The Senior Superintendent, Central Jail, Fatehgarh after verifying the records submitted that as per 'Register of Adhisthan' no such appointment had ever been made;

(iii) The Senior Super Sampurnanand Shivir Sitarganj, Uttarakhand vide letter dated 1 September 2007 confirmed the forged entires in the service records;

(iv) If the writ petitioner had started his services from Fatehgarh and then from Sitarganj there should have been G.P.F. pass book or payment of salary record but when the department perused the payment register from 1986 onwards, it was found that there is no entry of payment of Rs.50/- as contribution towards G.P.F. The Salary Register of the writ petitioner was, therefore, found to be forged and fabricated; and

(v) Even in Form-1 Ledger showing the contribution of an employee towards G.P.F., there is no entry of the writ petitioner or other Bandi Rakshak whose appointments are, therefore, based on forged and fabricated documents.

It has, therefore, to be seen whether the impugned orders required any interference when nothing substantial had been brought on record by the learned counsel for the writ petitioner to controvert the findings recorded in the orders rejecting the representations regarding submission of fake appointment order and joining reports, except reliance on the entries made in the service book.

The Supreme Court in **R. Vishwanatha Pillai Vs. State of Kerala**[1] observed that appointment to a post on the basis of forged documents is void and *non est* in the eye of law and the right to salary can only flow

1 (2004) 2 SCC 105

from a valid and legal appointment. The Supreme Court further observed that a person who obtains appointment on the basis of a forged appointment order does not deserve any sympathy or indulgence from the Court as a person who seeks equity must come with clean hands. The observations are reproduced below :

> "19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. **The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court**. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. **Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud**. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to

> bend the arms of law in a case where an individual acquired a status by practising fraud."
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> (emphasis supplied)

This decision was followed by the Supreme Court in **Bank of India & Anr. Vs. Avinash D. Mandivikar & Ors**[2]. The Supreme Court further observed that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence and that the very basis of an appointment obtained by fraud collapses and the appointment is no appointment in the eye of law. The observations are as follows:

> "11. ….... The matter can be looked into from another angle. When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. ….....”

In **State of Manipur & Ors. Vs. Y. Token Singh & Ors.**[3], the Supreme Court observed that if the offer of appointment itself is a forged document, the State cannot be compelled to pay salary to the appointee. The relevant observations are :-

> “17. **If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer**. Any action, which had not been taken by an authority competent therefor and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fide.
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> 18. **Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had inter alia**

2 (2005) 7 SCC 690
3 (2007) 5 SCC 65

> **prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed**. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.
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> ….....
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> 22. The respondents, therefore, in our opinion, were not entitled to hold the posts. **In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility**. It is true that where appointments had been made by a competent authority or at least some steps have been taken in that behalf, the principles of natural justice are required to be complied with, in view of the decision of this Court in Murugayya Udayar (1991) Supp 1 SCC 331."
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> (emphasis supplied)

In this view of the matter, when the writ petitioner had produced forged appointment orders/transfer orders and nothing has been pointed out to controvert the finding recorded in the impugned order, the writ petitioner was not entitled to the grant of any relief under Article 226 of the Constitution. The learned Judge was, therefore, not justified in issuing a direction to provide light duty to the writ petitioner after setting aside the orders rejecting the representations.

The next issue that arises for consideration is whether any detailed enquiry was required to be held for compliance of the principles of natural justice.

In the present case, no punitive order had been passed against the writ petitioner. The case of the appellants is that when the writ petitioner came to know that the department had found out that the writ petitioner had produced a fake appointment order and subsequent transfer orders and that an FIR had also been lodged, he stopped reporting for duty and subsequently filed representations for payment of salary. These representations have been rejected. It is in this light that it has to be examined whether any disciplinary enquiry was required to be conducted.

It cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that principles cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in **K.L. Tripathi Vs. State Bank of India & Ors.**[4]**; N.K. Prasad Vs. Government of India & Ors.**[5]**; State of Punjab Vs. Jagir Singh**[6]**; Karnataka SRTC Vs. S.G. Kotturappa**[7] and in **Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd.**[8]**.**

In **Union of India Vs. Tulsiram Patel**[9], the Supreme Court observed :

> "Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to

4 AIR 1984 SC 273
5 (2004) 6 SCC 299
6 (2004) 8 SCC 129
7 (2005) 3 SCC 409
8 (2005) 5 SCC 337
9 AIR 1985 SC 1416

> situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible."

It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference can be made to the decisions of the Supreme Court in **Sohan Lal Gupta VS. Asha Devi Gupta**[10]**; Mardia Chemicals Ltd. Vs. Union of India**[11] and **Canara Bank Vs. Debasis Das**[12]**.**

Wade 'On Administrative Law' 5th Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor it is possible to define their scope and extent and everything must depend on the subject-matter. The application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a mere technical infringement of natural justice.

The Supreme Court in **Mohd. Sartaj & Anr. Vs. State of U.P. & Ors.**[13], after considering a number of its earlier decisions, made the following observations with regard to the requirement of giving notice and the same are as follows :-

> "In M.C. Mehta v. Union of India, 1999 (6) SCC 237, this Court has laid down that there can be

10 (2003) 7 SCC 492
11 AIR 2004 SC 2371
12 AIR 2003 SC 2041
13 AIR 2006 SCW 399

certain situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned interference under Article 226 is not necessary.

In the case of Aligarh Muslim University v. Mansoor Ali Khan, AIR 2000 SC 2783, this Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court referred to the decisions rendered in M.C. Mehta v. Union of India (supra), the exceptions laid down in S.L. Kapoor's case (supra) and K.L. Tripathi v. State Bank of India AIR 1984 SC 273, where it has been laid down that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) has to be proved. The Court has also placed reliance in the matter of S.K. Sharma v. State Bank of Patiala, 1996 (3) SCC 364, and Rajendra Singh v. State of M.P. 1996 (5) SCC 450, where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In Viveka Nand Sethi v. Chairman, J.&K. Bank Ltd. and others (2005) 5 SCC 337, this Court has held that the principles of natural justice are required to be complied with having regard to the fact-situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. In another recent judgment in the case of State of U.P. v. Neeraj Awasthi & others, JT 2006 (1) SC 19, while considering the argument that the principle of natural justice had been ignored before terminating the service of the employees and, therefore, the order terminating the service of the employees was bad in law, this Court has considered the principles of natural justice and the extent and the circumstances in which they are

> attracted. …….. **Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not not a punitive measure but they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment**.
>
> …….. **In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and, therefore, no hearing was required before the cancellation of their services.** ….....”
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> (emphasis supplied)

It is clear from the aforesaid decision of the Supreme Court that the application of the principles of natural justice depends upon the relevant facts and circumstances of the case and whenever a complaint is made about its violation, the Court has to decide whether the observance of that Rule was necessary for a just decision on the facts of the case. The Supreme Court also noticed that there can be a situation where persons who are not even eligible for being appointed are appointed and in such a situation, if such persons are discontinued it would not be a punitive measure because they have been discontinued as they had not been appointed. In fact, it has been hold, that they do no hold any right over the post and, therefore, not entitled for any hearing. The decision also holds that where facts are admitted, an enquiry would be an empty formality.

It also needs to be remembered that the Supreme Court in **Kendriya Vidyalaya Sangathan & Ors. Vs. Ajay Kumar Das & Ors.**[14] considered the question of observance of principles of natural justice in a case where the appointments had been made by an Assistant

14 (2002) 4 SCC 503

Commissioner after his services had been terminated. It was held that appointments orders were not valid orders and if the appointment orders were a nullity then there was no question of observing the principles of natural justice and that it would be futile to contend that notices should have been served.

The Supreme Court in **S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors.**[15] also refused to interfere on the ground of breach of principles of natural justice and the portion of the judgment is reproduced below :

> "The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. **We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation**."
>
> (emphasis supplied)

In the facts and circumstances of the case, it is apparent that sufficient enquiries had been conducted by the department to arrive at a conclusion that the writ petitioner had submitted fake appointment order and transfer orders to gain appointment and continue in service. Nothing has been pointed out by learned counsel for the writ petitioner to controvert these findings except placing reliance on the service book but, as noticed above, even the service book has been found to have been prepared on the basis of these forged documents. The case of the

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15 (1993) 6 SCC 331

appellants is that the writ petitioner on his own stopped reporting for duty when it came to his knowledge that the department had found out that he had obtained appointment on the basis of a fake order and that an FIR had been lodged against him. It is then that he filed a writ petition for payment of salary. The writ petition was dismissed but in Special Appeal the only direction that was given was to decide his representation. The representation was decided by a detailed order dated 4 June 2008. This order was challenged by the writ petitioner by filing Writ Petition No.30630 of 2008 which was dismissed on 3 July 2008 and what was observed by the Court also needs to be reproduced :

> "Pursuant to the directions of this Court, representation of the petitioner has been rejected by order dated 04.06.2008 which has been passed by the Senior Superintendent District Jail, Gorakhpur. **A very detailed finding has been recorded in the impugned order and if they are accepted then they are very serious in nature**. The kind of charges which are against the petitioner on being found to be correct are to disturb the system itself."
>
> (emphasis supplied)

The subsequent representation filed by the writ petitioner was also rejected by order dated 27 September 2008. In **Mohd. Sartaj** (supra), the Supreme Court observed that discontinuation of the service of an employee, in such circumstance, would not amount to a punitive measure as he had claimed appointment on the basis of a fake order and, therefore, no hearing was required to be given.

In such circumstances and in view of the aforesaid decisions of the Supreme Court, holding of a disciplinary enquiry against the writ

petitioner was really not required and would have been merely an empty formality.

The last contention of learned counsel for the writ petitioner that the Special Appeal would not be maintainable as it has been filed against the appellate order is without any basis as learned counsel for the writ petitioner has not been able to point out any statutory rule under which the appeal was filed before the Deputy Inspector General. It is clear that only a representation was filed which was rejected.

It is, therefore, not possible to sustain the judgment and order dated 9 April 2013 passed by the learned Judge by which the orders rejecting the representations have been set aside and a direction has been issued to the respondents to take a decision for giving light duty to the writ petitioner, as advised by the Medical Board.

The Special Appeal is, accordingly, allowed. Consequently, Writ Petition No.17742 of 2009 filed by Durvijay Singh stands dismissed.

Date:21.07.2015
SK

(Dilip Gupta, J.)

(Vinod Kumar Misra, J.)

Court No.39

Civil Misc. Delay Condonation Application No. 233088 of 2013

In

Case :- SPECIAL APPEAL DEFECTIVE No. - 799 of 2013

Appellant :- State Of U.P . Thru' Principal Secry. And 4 Others
Respondent :- Durvijay Singh
Counsel for Appellant :- A.K Roy,S.C.
Counsel for Respondent :- R.N. Singh

Hon'ble Dilip Gupta, J.
Hon'ble Vinod Kumar Misra, J.

Heard learned counsel for the parties.

In view of the averments made in the affidavit filed in support of the application under Section 5 of the Limitation Act, we are satisfied that the applicants were prevented by sufficient cause from preferring the Special Appeal within the period of limitation.

The application is, accordingly, allowed. The delay in filing the Special Appeal is condoned.

Date:21.07.2015
SK

(Dilip Gupta, J.)

(Vinod Kumar Misra, J.)