

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4348-4349 OF 2009
(Arising out of SLP(C) Nos. 3795-3796 of 2008)

Prakash Ratan Sinha

.....Appellant

Versus

State of Bihar & Ors.

.....Respondents

JUDGMENT

H.L. Dattu,J.

Delay condoned.

- 2) Leave granted.
- 3) These appeals by special leave have been filed against the judgment and order of the High Court of Judicature at Patna in L.P.A. No. 887 of 2005 dated 7.9.2005, wherein and whereunder, the Division Bench has set aside the order passed by the learned Single Judge in W.P. No. 1677 of 2001 dated 5.7.2004.
- 4) The facts which are not in dispute are, the appellant was appointed on daily wages on 31.12.1976 and he was made permanent in the work charge establishment on 15.5.1989 along with several other

persons in the respondent – establishment. It is the assertion of the appellant that though he was appointed as a daily wager, he was asked to discharge the work of Accounts Clerk in view of his qualification and experience. It is also stated, that, he had filed an application before the Circle Promotion Committee for his promotion or re-appointment to the post of Accounts Clerk and that request was considered by the Committee on 6.1.1998 and recommended his case for change of his nomenclature from daily wager to Accounts Clerk and on the recommendation so made, the Electrical Superintending Engineer, Department of Energy, Electric Works Circle, Patna, issued an order changing his nomenclature from labourer to Accounts Clerk, subject to approval of the Chief Electrical Engineer, Department of Energy, Government of Bihar, Patna. The incharge Chief Electrical Inspector vide his order dated 11.11.1998 approved the proposal of the Committee and had issued necessary orders in this regard. However, subsequently, the Regular Chief Engineer on assumption of charge, having found that the order passed by the incharge Chief Electrical Engineer is contrary to the Rules and the Government Orders issued from time to time, has cancelled the earlier order dated 11.11.1998 vide his order dated 11.12.1998. This order has been questioned by the appellant by

filing a writ petition in No. 1677 of 2001. The same was allowed by the learned Single Judge, mainly on the ground that the impugned order has been passed without affording an opportunity of hearing to the appellant. The appeal filed by the respondents is allowed by the Division bench and has set aside the order passed by the learned Single Judge, primarily on the ground, that affording an opportunity of hearing before passing the impugned order is mere empty formality and even if an opportunity of hearing was granted, the result would have been the same. The Court to sustain its view, has placed reliance on the observations made by this Court in the case of State of Maharashtra and Others vs. Jalgaon Municipal Council and Others – (2003) 9 SCC 731 and Canara Bank and Others vs. Debasis Das and Others – (2003) 4 SCC 557. In Jalgaon Municipal Council's case, it was stated "there is also a situation which Prof. Wade and Forsyth term as 'dubious doctrine' that right to fair hearing may stand excluded where the Court forms an opinion that a hearing would make no difference. However, it was held that utter caution is needed before bringing the last exception into play". In the case of Canara Bank and Others, it was observed, that, where grant of opportunity in terms of principles of natural justice does not improve the situation, 'unless formality theory' can be pressed into

service.

- 5) The issue that requires to be decided in this civil appeal is, whether the order passed by Chief Electrical Engineer dated 11.12.1998 is amenable to judicial review on the touchstone of principles of natural justice.
- 6) The respondent is an instrumentality of the State, and therefore, all its administrative decisions would be subject to the doctrine of equality and fair play, as incorporated in Articles 14 and 21 of the Constitution of India. If any of its actions or administrative decisions result in civil consequences, the actions or decisions could be judicially reviewed or tested on the anvil of principles of natural justice. This principle of law has been laid down by this Court in catena of cases. In *Canara Bank and Others Vs. Debasis Das and Others* reported in (2003) 4 SCC 557, this Court has held in paragraph 19 that even an administrative order which involves civil consequences must be consistent with the rules of natural justice. This Court has elaborated the expression 'civil consequence' by observing that it encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. This Court has further stated, that, in its wide umbrella comes everything that affects a citizen in civil life.

- 7) The decision complained against in the instant case is an administrative decision. The decision is likely to have far reaching civil consequences for the appellant, as it has adversely affected his right to continue in the promotional post. Therefore, in our view, the decision concerning the promotion makes itself available for scrutiny by the Courts on the touchstone of well-established principles of natural justice.
- 8) The decision that was questioned before the Court was an administrative decision having civil consequences and is alleged to have been taken without affording an opportunity of hearing to the appellant. The argument of the learned Counsel for the appellant, basically is that, the administrative decision taken by the respondents is unfair, unreasonable and in breach of principles of natural justice. The administrative decision taken by the respondents is within the realm of public law and therefore, the decision ought to have been taken in a fair and reasonable manner. This was more necessary because the action cancelling the promotion of the appellant had civil consequences in the sense that it not only puts an end to the right of the appellant and also his further career prospectus. Therefore, the respondents are under an obligation to take all decisions in a fair and lawful manner by

adhering to the rules of natural justice. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made. Corollary principles emanating from these cases are as to what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case and that it is only where there is nothing in the statute to actually prohibit, the giving of an opportunity of being heard and on the other hand, the nature of the statutory duty imposed on the decision maker itself implies an obligation to hear before deciding. These cases have also observed, whenever an action of public body results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person. This Court in Canara Bank's case (supra) has stated that "the adherence to principles of natural justice as recognized by all civilized states is of supreme importance or when a quasi judicial body embarks on determining dispute between

the parties, or any administrative action involving civil consequences is an issue. Even an administrative order, which involves civil consequence must be consisted with the rules of natural justice.

- 9) In the instant, it is not in dispute between the parties that though the appellant was engaged as a daily wage worker, he was directed to discharge the work of Accounts Clerk. The Circle Promotion Committee had recommended the case of the appellant for change of nomenclature from labourer to Accounts Clerk. On the basis of the recommendations made, the Electrical Superintending Engineer, Department of Energy changed his nomenclature from labourer to Accounts Clerk, subject to further approval by Chief Electrical Engineer, Department of Energy. It so happens the incharge Chief Electrical Engineer approves the proposal of the Circle Promotion Committee and issue necessary orders in this regard. Subsequently, the Regular Chief Electrical Engineer takes exception to the action of incharge Chief Electrical Engineer and cancels the earlier order passed by the impugned order dated 11.12.1998. It is the case of the respondents before the High Court that the appellant was not regularly promoted to the post of Accounts Clerk, but only the change of nomenclature from that of labourer to Accounts Clerk.

Therefore, we are not expressing any opinion in this regard. In fact, the parties have proceeded before the various forums that though the appellant was promoted as Accounts Clerk from the post of labourers in view of his qualification and experience, the same could not have been disturbed without affording an opportunity of hearing to the appellant. There is no dispute between the parties that the personal or oral hearing was not granted to the appellant before passing the impugned order and therefore, the impugned order is in violation of principles of natural justice.

- 10) The Division Bench of the Court does not dispute the fact of passing of the impugned order without hearing the appellant, but condones the procedural irregularity by bringing it under the “doctrine of futile exercise”. According to the Court, even if an opportunity of showing cause was afforded to the appellant, it would not have made any difference. We fail to understand the logic adopted by the Division Bench. The reason being, that, it is the case of the appellant that on a recommendation made by Circle Promotion Committee, he was regularly promoted to the post of Accounts Clerk, since he had necessary qualification and experience and it is his further case that though he was appointed as a daily wager, right from his induction, he was directed to discharge the work of Accounts Clerk. It is also

his case that on the recommendation made by Circle Promotion Committee, the incharge Chief Electrical Engineer has passed an order approving the recommendation and granting promotion to the appellant to the post of Accounts Clerk. However, it is the case of the respondents that the Circle Promotion Committee had only recommended the change of nomenclature from that of daily wager to that of Accounts Clerk and that it is not a case of regular promotion. It is their further case, even assuming it is a case of promotion, the same has been done without following the prescribed procedure and also by ignoring the claim of several other employees and therefore, respondents were justified in cancelling the order passed by incharge Chief Electrical Engineer. In our view, these are all disputed facts and the respondents without affording an opportunity of hearing, could not have taken any administrative decision unilaterally. Therefore, the Division Bench of the High Court is not justified in concluding “unless formality theory” need not have been followed by the respondents.

- 11) In view of the above discussion, we cannot sustain the order passed by the High Court in L.P.A. No. 887 of 2005 dated 7.9.2005. Accordingly, we allow these appeals and set aside the order passed by Chief Electrical Engineer, Department of Energy, dated

11.12.1998. Liberty is reserved to the respondents to initiate appropriate proceedings against the appellant in accordance with law, if they so desire. In the facts and circumstances of the case, parties are directed to bear their own costs.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

**New Delhi,
July 14, 2009.**

