

Mohd. Sartaj And Anr vs State Of U.P. And Others on 16 January, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3492, 2006 (2) SCC 315, 2006 AIR SCW 399, 2006 LAB. I. C. 947, 2006 (2) ALL LJ 234, 2006 (2) SERVLJ 208 SC, 2006 (1) SCALE 265, (2006) 38 ALLINDCAS 23 (SC), 2006 (3) SRJ 36, (2006) 2 SERVLJ 208, 2006 (1) UPLBEC 719, (2006) 108 FACLR 847, (2006) 2 PAT LJR 167, (2006) 1 SUPREME 262, (2006) 1 UPLBEC 719, (2006) 1 CURLR 864, (2006) 1 ESC 56, (2006) 1 LAB LN 842, (2006) 1 SCALE 265, (2006) 1 ALL WC 950, MANU/SC/336/2006, (2006) 2 SCJ 49

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Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:

Appeal (civil) 4507-508 of 2005

PETITIONER:

MOHD. SARTAJ AND ANR

RESPONDENT:

STATE OF U.P. AND OTHERS

DATE OF JUDGMENT: 16/01/2006

BENCH:

S.B. Sinha & P.P. Naolekar

JUDGMENT:

JUDGMENT P.P. NAOLEKAR,J.

In the year 1984, the Government of U.P. had decided to appoint Urdu teachers in most of the districts of U.P. and the number of teachers to be appointed for each district was fixed. For the district of Muzaffarnagar, 60 Urdu teachers were to be appointed. In pursuance of the decision of the Government of U.P., the Basic Shiksha Adhikari, Distt. Muzaffarnagar by an advertisement dated 15.10.84 invited applications for the post of Asstt. Teachers (Urdu). The minimum educational qualification for the said post as per the advertisement was that the candidates should have either passed the Higher Secondary, Intermediate or equivalent examination thereto recognized by the Government (along with Urdu as subject) and possessed the Basic Teacher's Certificate (B.T.C.), Hindustani Teacher's Certificate, Junior Teacher's Certificate (J.T.C.), or Certificate of Teaching (T.C.) or equivalent thereto, recognized by the Government or any training equivalent thereto. The advertisement also provided that the higher caste candidates who were trained by 1974 and those

Scheduled Caste, Backward Caste and Scheduled Tribe candidates, who were trained upto 1975 may only apply because other candidates trained after this period were not going to be considered. Both the appellants had the High School Degree as well as the Intermediate Degree with Urdu as one of the subjects along with Urdu Training Certificate such as Adib, Adib-e-Mahir and Moallim-e-Urdu from the Jamia Urdu, Aligarh. In pursuance of the advertisement issued dated 15.10.84, the Basic Education Board, Muzaffarnagar conducted an interview and the Upper Basic Shiksha Adhikari, respondent no.4 herein, on 19.6.85 published a list of selected candidates, which included the names of the appellants herein. The list / memorandum itself provided that all the selected candidates were required to join their respective schools / colleges within the period of 15 days, otherwise their appointment would automatically be deemed to be cancelled. After receipt of the memorandum both the appellants joined duties within the stipulated 15 days and started working as per the conditions of service. However, on 7.8.85, i.e., within a very short span of their appointment the Urdu Advisory Director of Education, respondent no.2 herein, issued direction to respondent no.4, regarding the cancellation of the appointment of the appellants on the ground that they did not possess the Basic Training Certificate (B.T.C.). Respondent no. 4 vide his letter dated 9.8.85 cancelled their appointment and directed them to contact the appointing authority, along with B.T.C. and Intermediate (Urdu Certificate) for the purpose of verification, if these documents were in their possession. Being aggrieved by the above- mentioned order, the appellants filed a writ petition before the Lucknow Bench of the Allahabad High Court on 20.9.85 and the High Court stayed the operation of the order of cancellation of their appointments.

Meanwhile, the appellants acquired B.T.C. in 1993 and 1995 respectively and continued with their service. Before their appointment, on 28.1.85 the Special Secretary to the U.P. Government by letter informed all heads of departments and Chief Officers, U.P. that Hon'ble Governor had approved such candidates who were qualified as Moallim-e-Urdu from Jamia Urdu, Aligarh and got the experience of teaching at Higher Secondary School as eligible for employment in the State services / educational institutions. Similarly, on 21.10.88 the Special Secretary to the U.P. Government passed an order to inform all head of departments and Chief Officers of U.P. that the candidates with the degree of Moallim-e-Urdu granted by Jamia Urdu, Aligarh, and those who had got the experience of teaching upto Higher Secondary level had been directed to be appointed as teachers in State services. On 13.9.94 the Secretary of U.P. Government by his order informed all authorities of education that Hon'ble Governor had granted sanction to Moallim-e-Urdu for teaching Urdu in junior and senior schools and it was given equivalent status of B.T.C.. Thus by this Circular, degree of Moallim- e-Urdu from Jamia Urdu, Aligarh was given equivalent status of B.T.C. Certificate.

Before the High Court, it was contended by the appellants that the appointments were cancelled without issuing any prior notice or giving opportunity of being heard and hence the order of dismissal issued is violative of principles of natural justice. It is also urged that the appellants having higher qualifications than the prescribed ones and hence even if they acquired the prescribed qualifications at later stage, the selection and appointment was perfectly lawful, just and proper. The argument of the appellants was countered by the respondents contending therein that the appellants were not entitled to continue in service and their appointment was rightly cancelled within the short span of time on detecting the error that they did not qualify for the appointment, and, therefore, the compliance of natural justice was not necessary. The appellants having not possessed the minimum

qualification under the Rules, their initial appointment itself was bad.

The High Court, relying upon the ruling of this Court in *Dr. Prit Singh vs. S.K. Mangal & Ors.* 1993 Supp. (1) S.C.C. 714, held that appellants' appointment was not proper. It further relied on *State of Mizoram vs. Biakchhawna* (1995) 1 S.C.C. 156, to conclude that it was incumbent on the authorities to advertise the vacancy strictly by following Rule 8 of the Service Rules which was not done. It was also pointed out that any selection made in violation of the relevant rules was illegal and reliance was placed on *Gurdeep Singh vs. State of J. & K. & Ors.* 1995 Supp. (1) S.C.C. 188 along with the decision of a Division Bench of the Allahabad High Court in *Ashok Kumar Saxena vs. State of U.P. & Ors.* 1994 LAB.I.C. Reliance was also placed on *V.K. Sood vs. Secretary Civil Aviation & Ors.* 1993 Supp. (3) S.C.C. and *J. Ranga Swamy vs. Govt. of Andhra Pradesh A.I.R. 1990 S.C. 535* to observe that it was the duty of the rule-making authority to regulate the method of recruitment and provide necessary qualification after considering the relevant facts and circumstances.

Regarding the statutory force of Rule 8, the Court observed that it could not be modified either by government or by the advertisement as per this Court's ruling in *State of Haryana vs. S.J. Bahadur*, 1972 (2) S.C.C. 188, and, therefore, the advertisement for the posts was in violation of the service rules.

Regarding the non-compliance of natural justice, the Court opined that in the present case there was no procedural illegality and relied upon the *State of M.P. vs. Shyama Pardhi*, 1996 (7) S.C.C. 118 where it was observed that question of violation of natural justice did not arise in a case where the pre-requisite minimum qualification for the appointment was not fulfilled and resulted in the cancellation of the appointment. The Court also opined that the action of cancellation was taken swiftly within a short interval and merely because appellants were allowed to continue on the post in pursuance of the interim order, would not entitle them to the posts on which they were illegally appointed.

By order dated 3.2.2004, the Single Judge dismissed the petition and directed the State Government to re-advertise the post as early as possible and make such fresh recruitment in accordance with rule. The Court further pointed out that State Govt. could amend the existing rule and consider the petitioners' case by relaxing their age while making fresh recruitment. It was also pointed out that State Govt., if desired, could provide appropriate provision in rule to consider petitioners' case for recruitment at par with other candidates. Appeal filed against the order was also dismissed by the High Court on 15.3.2004. Aggrieved by this, the present appeals had been filed.

It is contended by the counsel for the appellants that the appellants having been appointed in pursuance of the advertisement after following due procedures, cancellation order of their appointment could have been issued only after giving them an opportunity of being heard. The State is bound to give a person who is affected by their decision an opportunity of making a representation when the right has been created in favour of the appellants by issuance of appointment orders in their favour. In any case, the State by various orders having given equivalence of the degree obtained by the appellants, i.e., Moallim-e-Urdu from Jamia Urdu, Aligarh to the B.T.C., their services could not have been cancelled. It is further urged that appellants'

appointment has been made having possessed of the qualifications as mentioned in the advertisement and that being the case, it could not have been cancelled. On the other hand, it is urged by the learned counsel for the respondents that the recruitment to the public services should be held in accordance with the terms of the recruitment rules and the appellants could not claim any right over the post when they were not qualified to be appointed to the said post. The appellants have been given sufficient opportunity in the order of cancellation itself wherein they have been provided with an opportunity to produce the B.T.C. Certificate along with Intermediate Urdu Certificate before the appointing authority in original so that mistake, if any, committed in cancellation of the appointment could be rectified. It is further urged that in government order, administrative instructions inconsistent with the statutory rules would be illegal and if any change is to be brought about it can only be done by suitably amending the rules. The appointment of the appellants being contrary to the rules, they cannot claim any right of being heard before the order of cancellation was issued.

The appellants' appointment was made under U.P. Basic (Teachers) Services Rules, 1981 (hereinafter shall be referred as "Rules") framed under U.P. Basic Education Act, 1972. Rule 8 of the said Rules prescribes academic qualifications which reads as under :-

"(1) The essential qualifications of candidates for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each:

Post Academic qualifications

(i) Mistress of Nursery Schools Certificate of Teaching(Nursery) from a recognized training institution in Uttar Pradesh or any other training qualification recognized by the State Government as equivalent thereto.

(ii) Assistant Masters and Assistant Mistress Junior Basic Schools A Bachelor's Degree from a University established by law in India or a Degree recognized by the State Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognized by the Government as equivalent thereto:

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

(2) The essential qualification of candidates for appointment to a post of Assistant Master and Assistant Mistress of Senior Basic School for teaching Science, Mathematics, Craft or any language other than Hindi shall be as follows :-

(i) Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or any other examination recognized as equivalent thereto

by the State Government with science, mathematics craft or particular language, as the case may be, as one of the subjects in which he or she has been examined for the purpose of such examination; and

(ii) Training qualification consisting of Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognized by Government as equivalent thereto."

The requisite qualification is High School Examination of the Board of High School and Intermediate Education, U.P. or equivalent qualification recognized by the State Government together with the training qualification which consisted either one among the Basic Teacher's Certificate (B.T.C.), Hindustani Teacher's Certificate, Junior's Teacher's Certificate, Certificate of Teaching or any other training course recognized by the State Government as equivalent thereto. Thus under the Rules, the basic qualification for the post of Asstt. Teacher, apart from the educational qualification, was the training qualification of the Basic Teacher's Certificate or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or equivalent training course recognized by the State Government. It is an admitted position by both the parties that these qualifications are required for appointment to the post of Asstt. Teacher. It is also not the case of the appellants that the academic qualifications were amended at the time of their appointment. Thus, admittedly on the date of appointment, the appellants did not hold the training qualification to be appointed to the post of Asstt. Teachers as prescribed under Rule 8.

It is the case of the appellants that once appointed their services could not have been cancelled, without affording them an opportunity of being heard and giving them a chance to explain their position.

In the matter of *S.L. Kapoor vs. Jagmohan and Ors.* 1980 (4) S.C.C. 379, this Court has observed that a separate showing of the prejudice caused is not necessary and the non-observance of natural justice is in itself a prejudice caused. The Court has relied upon the decision given in *State of Orissa vs. Ms. Binapani Dei* A.I.R. 1967 S.C. 1269 for the proposition that even if an administrative action involves civil consequences it must observe rules of natural justice. *Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi* A.I.R. 1978 S.C. 851, has also been cited as civil consequences undoubtedly cover infraction of not merely property or personal rights but of the civil liberties, material deprivation and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence. The Court has also cited the observation of one of the judges of House of Lords in *Ridge vs. Baldwin* 1964 A.C. 40 for the purpose that administrative body may in a proper case be bound to give a person who is affected by their decision an opportunity of making representation. But all depends on whether he has some right or interest or some legitimate expectation of which it would not be fair to deprive him. Similarly, the Privy Council's decision in the *Alfred Thangarajah Jaurayappah vs. W.J. Fernando* 1967 (2) A.C. 337 has also been referred to show that there are three matters which always be borne in mind while considering whether the principle *audi alteram partem* should be complied or not? First, what is the nature of property, the office held, the status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person

claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when the right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined.

However, in *S.L. Kapoor vs. Jagmohan and Ors* (supra), this Court has also observed as under :-

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because courts do not issue futile writs."

In the matter of *Shrawan Kumar Jha and Ors. vs. State of Bihar and Ors.* 1991 Supp. (1) S.C.C. 330, the appellants were appointed as Asstt. Teachers and before joining they were supposed to get their certificates and other qualifications verified from the authorities and as per the appellants, they had joined their respective schools. By an order dated November 2, 1988, the Dy. Development Commissioner cancelled the appointment of the appellants because, according to him, the Distt. Superintendent of Education had no authority to make the appointments and the condition which was the part of appointment order were not complied with. The Court set aside the order of cancellation holding that it is settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice.

Shrawan Kumar Jha (supra) was distinguished in *State of M.P. & Ors. vs. Shyama Pardi & Ors.* 1996 (7) S.C.C. 118. In this case, the persons, not possessing the pre-requisite qualifications prescribed by the statutory rules, were wrongly selected. They have completed their training and were appointed as Auxiliary Nurse-cum- Midwife. Their services were terminated without giving any prior notice. Holding it to be illegal, the termination was challenged before the Service Tribunal and the order of termination was set aside as the principle of natural justice was not followed. This Court had found in an appeal that the original petitioners did not possess the pre- requisite qualifications, viz., 10 + 2 with Physics, Chemistry and Biology as subjects. The rules specifically provided that qualification as condition for appointment to the post. Since the prescribed qualifications had not been satisfied, the appointment and training was per se illegal and, therefore, the Tribunal was not right in directing their re-instatement. *Shrawan Kumar's* case was distinguished on the ground that they were not disqualified to be appointed but they had not undergone the training and the appointment was set aside on the ground for want of training. The Court has drawn a distinction between the initial disqualification for appointment and irregularity in the appointment and subsequent training for application of the principle of natural justice. In *M.C. Mehta vs. UOI* 1999 (6) S.C.C. 237, this Court has laid down that there can be 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 vs. Mansoor Ali Khan A.I.R. 2000 S.C. 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 vs. UOI (supra), the exceptions laid down in S.L. Kapoor's case (supra) and K.L. Tripathi vs. State Bank of India A.I.R. 1984 S.C. 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 vs. State Bank of Patiala 1996 (3) S.C.C. 364 and Rajendra Singh vs. State of M.P. 1996 (5) S.C.C. 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 vs. 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. vs. 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. This Court has found in Neeraj Awasthi's case (supra) that if the services of the workmen are governed by the U.P. Industrial Disputes, they are protected under that law. Rules 42 and 43 of the U.P. Industrial Disputes Rules lay down that before effecting any retrenchment the employees concerned would be entitled to notice of one month or in lieu thereof pay for one month and 15 days wages for each completed year of service by way of compensation. If retrenchment is to be effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principles of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not as 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 the present case, the appellants' case fall within the exception laid down in S.L. Kapoor's case (supra) and other supporting cases, as admittedly, the appellants were not qualified and they did not possess the B.T.C. or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognized by the State Government as equivalent thereto at the time of their initial 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. In the present case, the

cancellation order has been issued within a very short span of time giving no probability for any legitimate expectation to the appellants regarding continuation of their service. There was no separate appointment order issued in favour of the appellants but the memorandum dated 19.6.85 wherein the list of selected candidates was published, provided that all the selected candidates must join their respective schools/colleges within 15 days and from this the nature of appointment made cannot be ascertained. Moreover, the cancellation order itself gives an opportunity that if they do hold and possess the B.T.C. qualification along with intermediate qualification, they may contact and get the same verified on 14.8.85 by the appointing authority and they may bring this to the notice of the concerned authorities. The copy of the order of cancellation was also sent to the Principal concerned of the institution with the remarks that he should relieve Urdu teacher with immediate effect if he did not possess the certificate of passing the examination of intermediate and B.T.C.; and, if he possessed these certificates he should submit the same to the office of the District Basic Education Officer, Muzaffarnagar. Therefore, it is apparent that any person having the basic qualification for the appointment can produce it before the concerned official so that immediate steps can be taken with regard to the order of appointment cancellation.

In our opinion, on the above facts no prejudice has been caused to the appellants by not serving notice of giving hearing before the order of cancellation was issued.

The contention of the learned counsel for the appellants is that State by various orders had given equivalence to the degree of Moallium-e-Urdu granted by Jamia Urdu, Aligarh with that of Basic Teacher's Certificate, is not correct. In Government Order dated 28.1.85 the Governor was pleased to approve the candidates in State services who qualified Moallium-e-Urdu granted by Jamia Urdu, Aligarh and who got experience of teaching Urdu at Higher Secondary Schools. This order did not provide for equivalence of Moallium-e-Urdu granted by Jamia Urdu, Aligarh, to that of B.T.C.. In another order dated 28.10.88 issued by the Government, which was clarificatory in nature, to all heads of departments and Chief of Officials of U.P. Karmik Anubhag, directed that the candidates who have got degree of Moallium-e-Urdu granted by Jamia Urdu, Aligarh and who had experience of teaching Urdu at Higher Secondary levels may be appointed in State services. This also does not indicate the equivalence of Moallium-e-Urdu granted by Jamia Urdu, Aligarh to that of B.T.C. The aforesaid two orders only indicate that the persons who are having degree of Moallium-e-Urdu granted by Jamia Urdu, Aligarh, can be appointed in the State services. The orders do not equate the degree of Moallium-e-Urdu granted by Jamia Urdu, Aligarh to that of Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course, indicated in the Rule. As far as the training is concerned there is no equivalence of the Certificate of Moallium-e-Urdu. It is for the first time by Order dated 13.9.94 the Government issued an order whereby the Governor granted a sanction that Moallium-e-Urdu degree for teaching Urdu in Junior / Senior basic schools is equivalent to B.T.C.. It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of Moallium-e-Urdu, Jamia Urdu Aligarh with that of B.T.C. in the year 1994 would not entail the benefit to the appellants on the date they were appointed. The appellants could not have been appointed to the post of Asstt. Teachers without having training required under Rule 8. That being the case, the appointments of

the appellants were de hors the Rules and could not be treated to be continued. For the aforesaid reasons, we do not find any substance in the appeals and are, accordingly, dismissed. However, in the circumstances of the case, there shall be no order as to costs.