

**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO.1636 OF 2012**

UNION OF INDIA AND ANR. ....APPELLANT(S)

:Versus:

RAGHUWAR PAL SINGH ....RESPONDENT(S)

**J U D G M E N T**

**A.M. Khanwilkar, J.**

1. The central questions posed in this appeal are: (i) whether the appointment of the respondent to the post of Veterinary Compounder, made by the Director Incharge at the relevant point of time without approval of the Competent Authority, was a nullity or a mere irregularity, which could be glossed over by the department to avert disruption of his services and; (ii) in any case, whether his services could be disrupted without giving him an opportunity of hearing.

2. Briefly stated, the respondent was appointed to the post of Veterinary Compounder in the Department of Animal Husbandry

and Dairying by one H.S. Rathore, the then Agriculture Officer, Central Cattle Breeding Farms (CCBF), Suratgarh, who was purportedly authorised only to look after the current duties of the post of Director. The appointment was made in November 1999 on a provisional and temporary basis, pursuant to the advertisement published in the newspaper on 15.10.1999. However, by an office order dated 29<sup>th</sup> August, 2000 issued under the signature of Dr. M.N. Haque, Director, the services of respondent came to be terminated. The said order reads thus:

“Government of India  
Ministry of Agriculture  
Department of All & Dairying  
.....Cattle Breeding Farm  
SURATGARH – 335 804 (Raj.)  
Dated the 29<sup>th</sup> August, 2000.

#### **OFFICE ORDER**

In compliance to Ministry's decision vide their letter No.8-6/99-Admn.III dated 18<sup>th</sup> August, 2000, **illegal appointment**, of Shri Raghuwar Pal Singh S/o Shri Himat Singh Shekhawat to the post of Veterinary Compounder, **made by the then Director Incharge Shri H.S. Rathore, agriculture Officer, without approval of the Competent Authority**, vide this office order No. 14-62/99-CPS/1562 dated 24/30 November, 1999, **is CANCELLED** with immediate effect. Accordingly, his service stands terminated as per terms and conditions laid down in point v) & vi) of the offer of appointment letter no.5-17/96-99/CPS/1308 dated 16/22 November, 1999.

(Dr. M.N. Haque)  
DIRECTOR.”

(emphasis supplied)

3. The respondent assailed the said order by filing Original Application No.206 of 2000 before the Central Administrative Tribunal, Jodhpur Bench at Jodhpur, *inter alia*, on the ground that the appointment was made by the Board of Officers after they had duly considered the matter and who were competent to issue offer of appointment to the respondent. Further, if there was any irregularity in the appointment process, that could have been enquired into by the department, but without taking recourse to any inquiry, the impugned termination order had been issued. Such action was violative of Article 311 (2) of the Constitution of India. According to the respondent, his appointment was made after following all the formalities by the department in a fair and transparent manner. He asserted that the department was therefore, estopped from terminating his services. Further, the impugned order is not a termination simpliciter but would cause prejudice to the respondent. It is a stigmatic order indicating that the appointment of the respondent was illegal, for which reason also, principles of natural justice ought to have been adhered to by the department.

4. The appellants resisted the said Original Application, by filing a detailed affidavit. According to the appellants, the respondent had not approached the Court with clean hands. In that, he has mentioned the numbers of the relevant documents, which pertain to some other case and not his order of appointment or termination. On merits, it was asserted by the appellants that the appointment of the respondent to the post of Veterinary Compounder was not as per the law. It was made by the then Director Incharge H.S. Rathore, Agriculture Officer and without approval of the competent authority. On the date of issuing the appointment letter, Shri H.S. Rathore had no authority to do so. It was asserted by the appellants that pursuant to advertisement dated 15.10.1999, appointment could be made only in conformity with the relevant Recruitment Rules, as amended from time to time, titled 'Central Cattle Breeding Farm (Class III and IV Post) Recruitment Rules, 1969'. In terms of the said Rules, an interview was required to be conducted by a Board comprising of three officers viz. Director of the Farm, Senior-most Technical Officer and one Government Officer of Central/State Government. However, the selection process and interview in the present case were conducted by the

Board unilaterally constituted by the said H.S. Rathore, consisting of seven members including himself, being Director Incharge. Further, he acted as the Chairman of the said Board. The Board consisted of the following members:

- “1) Shri H.S. Rathore, 1/C Director Chairman
- 2) Shri S.C. Aggarwal, Executive Member Engineer, Central State Farm (SFCI Ltd.) (Not a Central Govt. office)
- 3) Shri CS. Manohar, Asso. Professor Member Veterinary College, Bikaner (whereas a Veterinary Officer is already there in the office itself)
- 4) Shri R.L. Aswal, Asstt. Stn. Engineer Member All India Radio, Suratgarh
- 5) Dr. M.S. Rathore, Project Officer Member URMUL Dairy, Chhattargarh (Which is not a Central/State office)
- 6) Shri Baldev Singh, Agriculture Asstt. Member CCBF, Suratgarh (A Group ‘C’ employee)
- 7) Shri A. Narsingh, Technical Asst. member CCBF (A Group ‘C’ employee)”

In other words, the said Board was not validly constituted. Furthermore, the respondent was the son of the younger brother-in-law of H.S. Rathore, the Director Incharge and Chairman of the Board. The Chairman of the Board had direct relation with and interest in the appointment of the respondent. It is then stated that as per the prescribed procedure, appointment is required to be made after obtaining prior approval from the competent authority i.e. Ministry of Agriculture, Department of Animal Husbandry and Dairying, New Delhi. That procedure was, admittedly, not adhered to before issuing the letter of

appointment to the respondent. For all these reasons, the appointment of the respondent as made by the then Director Incharge H.S. Rathore, Agriculture Officer, was without any authority of law. It was a fraudulent appointment. When the same was noticed by the department, soon thereafter, the subject office order dated 29.08.2000 came to be issued. It was stated that the appointment of two other candidates to the post of Junior Mechanic and Tractor Helper made by H.S. Rathore as Director Incharge also came to be cancelled by the department by issuing similar termination order. In addition, a departmental action has been initiated against H.S. Rathore for committing serious misconduct and abusing his official position during the relevant period. The appellants pointed out that one Dr. B.S. Singh was posted as Director CCBF, Suratgarh on ad hoc basis and was ordered to function as Head of Office during his tenure vide order dated 21.02.1995. No authorization was given to H.S. Rathore to issue letter of appointment. He was merely holding the post of Agriculture Officer. Considering the unilateral action of H.S. Rathore, major penalty memorandum was issued to him by the department on 22.06.2001 in particular with reference to the appointments made by him to the post of

Veterinary Compounder, Junior Mechanic, Tractor Helper and milker and also on ad hoc basis to the post of LDC and UDC.

5. The other two affected candidates had also challenged the termination order passed against them by way of Original Application before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur. The Tribunal heard all the three O.As together as the issues raised therein were similar.

6. The Tribunal, after analysing the relevant contentions of both sides, opined that there was no infirmity in the termination order passed against the concerned applicant including the respondent herein. The Tribunal noted thus:

“11. It is not in dispute that till his ad hoc appointment as Director, Regional Station for Forage Production and Demonstration, Suratgarh, Shri HS. Rathore, was only posted as Agriculture Officer, CCBF, Suratgarh. This is apparent from the order dated 22.12.99 (Arin.A/10 of OA 204/2000). It is also admitted fact that by virtue of order dated 25.8.92 (Ann.A/6 to the same OA), Shri Rathore was ordered to look after the current charge of the post of Director, CCBF, Suratgarh. One Dr. B.S. Singh, was earlier posted as officiating Director and declared Head of office. After posting of Dr. Singh, no declaration was made in favour of Shri Rathore for his continuation as Head of Office. Applicants’ contention is ‘that since Dr. Singh, never took charge of the responsibilities of Director, CCBF, Suratgarh, Shri H.S. Rathore, continued to function as Head of the Office. By order dated 15.7.99 one Shri M.N. Haque, was posted as Director and ordered to take over charge of the post of Director, CCBF, Suratgarh, from Shri H.S. Rathore. This order was stayed by this Tribunal vide order dated 10.8.99, passed in OA 204/99. As a

consequence, Shri Rathore continued to look after the current duties of the post of Director, CCBF, Suratgarh.

**12. Now the question which arises for our consideration is whether an officer looking after the current duties of a post, could exercise the statutory power as vested in the regular incumbent of that post. In Government of India, Ministry of Home Affairs, OM No. F.7/14/61-Ests.(A) dated 24.1.63, clarification was issued that;**

**'an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise statutory powers whether those powers are derived direct from an act of parliament or rules Regulations and By-Law made under various Articles of the constitutions (e.g., Fundamental Rules Classifications, Control and Appeal Rules Civil Services Regulations Delegations of Financial Powers Rules etc.)'**

**(emphasis supplied).**

**13. By order dated 15.7.99 Shri. M.N. Hague, was posted as Director, CCBF, but only by virtue of the direction of this Tribunal in OA. 204/99, Shri Rathore, was permitted to look after the current charge. Obviously, this would not have empowered Shri Rathore to exercise statutory powers of the post of Director. For the purpose of statutory powers, he was only an Agriculture Officer.** Thus, the contention of the learned counsel for the applicant that Shri Rathore had been declared as 'Head of Office' and so could have exercised powers of appointment by virtue of Rule-2(j) of the CCS (CCA) Rules has no force. In view of the specific clarification given under Rule-12 in Government of India's Order No.2 that an officer holding current charge of duties of a post cannot exercise statutory powers. **The conclusion is obvious that Shri H.S. Rathore, at the time of recruiting the applicants, was only a Agriculture Officer looking after the current charge of the post of Director, CCBF, Suratgarh, and he had no authority to make any appointment to Group – C & D. It is a clear case of Shri Rathore exceeding his authority. Even if, he had processed the appointment, offer of appointments, obviously could not have been made while and unless, he had obtained approval from the Ministry of Agriculture. In fact, he did make a reference to the Ministry on 16.11.99 seeking approval or filling up these posts but for**

**reasons best known to him, he did not wait for this approval and went ahead and offered appointments to these applicants. This raise a serious doubt about the motive behind the haste on the part of Shri Rathore, in appointing these applicants.** The plea now taken on his behalf that such approval was not required has no basis at all. This is more so, when the rules clearly provide that an officer looking after the current charge should not have exercised statutory powers of appointments.

**14. These appointments are vitiated on other grounds also. The fact that all the three applicants are related to Shri Rathore, cannot be a mere co-incidence and reflects on the intention behind making these appointments. The ways the selection committee has been constituted by including even Group-C members, is indicative of the irregular practice knowingly adopted by Shri Rathore while making these appointments.”**

(emphasis supplied)

7. The Tribunal then adverted to the legal position that any appointment made de hors the statutory rules has no validity and that those who come by the back door have to return by the same back door and cannot claim protection of principles of natural justice. For that, the Tribunal relied on the exposition of this Court in the case of ***Union of India & Ors. Vs. M. Bhaskaran<sup>1</sup>, State of U.P. & Ors. Vs. U.P. State Law Officers Association & Ors.<sup>2</sup>*** and ***Kendriya Vidyalaya Sangathan &***

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<sup>1</sup> (1995) Suppl. 4 SCC 100

<sup>2</sup> (1994) 2 SCC 204

**Ors. Vs. Ajay Kumar Das & Ors.**<sup>3</sup> and in conclusion, observed thus:

“17. In this case, Shri H.S. Rathore, not only acted totally arbitrarily on every step of the process of recruitment but, acted beyond his powers and jurisdiction while making the appointment. For the view we have taken that these appointments were made by an authority not competent to make such appointments, we do not consider it necessary to go into the other aspects of the controversy that one the appointees did not possess the requisite qualifications or that the currency of the sanction of the posts had expired.

18. It is clear from the discussions in the preceding paragraphs that these appointments have been made in a totally irregular manner by an authority not competent to make such appointments. The appointment letters have been rightly cancelled and orders of cancellation do not call for any interference by this Tribunal. The applicants have miserably failed to establish any case in their favour. We dismiss these O.A. as totally devoid of merits. No order as to costs.”

8. Feeling aggrieved, the respondent filed a writ petition in the High Court of Judicature for Rajasthan at Jodhpur, being D.B. Civil Writ Petition No.4235 of 2002. The Division Bench of the High Court, by judgment and order dated April 23, 2010, upheld the argument of the respondent that the Office Order dated 29.08.2000 merely records one fact that the appointment of the respondent was made without approval of the competent authority. In such a case, the services of respondent could be terminated only after giving him opportunity of hearing. The High Court observed thus:

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<sup>3</sup> (2002) 4 SCC 503

“Upon perusal of the above order, it is abundantly clear that the only reason for termination of the services of the petitioner was that appointment was made without approval of the competent authority. No other ground with regard to competence of the Director or with regard to allegation against the Director for making illegal appointment is incorporated for establishing the allegations. In this view of the matter, the reason for termination of the services was not made known to the petitioner because the department neither issued any notice nor provide any opportunity of hearing to the petitioner before passing order dated 29.08.2004. The only reason for terminating his services is that appointment was made without approval of the competent authority; meaning thereby, for contesting the matter before the Tribunal the grounds other than the basic ground were submitted before the Tribunal which were meant to be basis for terminating the services of the petitioner; meaning thereby, the grounds agitated before the Tribunal were altogether different than the reasons incorporated in the order Annex. – 4. In this view of the matter, we are of the opinion that order of termination suffers from arbitrariness and illegality, so also, passed against the principles of natural justice.

We are unable to understand the reason incorporated in the reply filed by the respondents before the Tribunal because the reasons incorporated in the reply for terminating the service of the petitioner are not mentioned in the termination order.”

9. The High Court then adverted to the decision of **D.K. Yadav Vs. J.M.A. Industries Ltd.**<sup>4</sup> and the decision of the Division Bench of the same High Court in the case of **Bhupal Singh Vs. State of Rajasthan**<sup>5</sup>. Thereafter, the High Court concluded as follows:

“Upon assessment of the termination order, we are of the opinion that the Tribunal has committed gross error while dismissing the

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<sup>4</sup> (1993) 3 SCC 259

<sup>5</sup> (1988) 2 RLW 428

original application filed by the petitioner. So also, the termination order dated 29.8.2000 issued in violation of the principles of natural justice by the Department for terminating the services of the petitioner is patently illegal order and the same deserves to be quashed.

Hence, while following the judgment of Hon'ble Supreme Court in D.K. Yadav's case (*supra*) and judgment of the Division Bench of this Court in the case of Bhupa Singh Vs. State of Rajasthan (*supra*), this writ petition is allowed. The impugned judgment dated 06.06.2002 passed by the Tribunal in Original Application No.206/2000 is set aside. The order dated 29.08.2000 (Annex.-4 to the original application), terminating the services of the petitioner, is quashed and set aside. Further, it is made clear that as a consequence of quashing termination order Annex. – 4, the petitioner will be entitled to all consequential benefits except back-wages and petitioner shall be reinstated in service forthwith. Respondents will, however, be at liberty to pass fresh order for terminating the services of the petitioner, in accordance with law, if valid and lawful grounds exist to show that petitioner has committed any illegality while seeking appointment."

The High Court thus opined that the termination order could be passed only after giving opportunity to the respondent and not otherwise.

10. Being aggrieved, the appellants filed the present Special Leave Petition. This Court not only granted leave to appeal but also stayed the operation of the impugned judgment during the pendency of the appeal before this Court.

11. According to the appellant, the High Court committed manifest error in overturning a well considered decision of the Tribunal. For, the fact that no prior approval of the competent authority as required under the statutory rules had been

obtained before issuing the letter of appointment in favour of the respondent, is indisputable. That reason has been explicated in the subject office order dated 29.08.2000. The High Court, without recording any opinion on the efficacy of that reason, proceeded to set aside the subject office order on the ground that no opportunity was given to the respondent before issuing the same. Relying on the exposition in the cases of **Kendriya Vidyalaya Sangathan** (supra) and **State of Manipur and Ors. Vs. Y. Token Singh and Ors.**<sup>6</sup>, it is contended that giving prior opportunity to the respondent before issuing the subject office order was not obligatory; and no fruitful purpose would have been served by giving such notice. The High Court, therefore, was manifestly wrong. It is submitted that prior approval of the competent authority is the quintessence for issuing a valid and legal appointment order. Whereas, appointment order issued in favour of the respondent being void ab initio, the competent authority was duty bound to take corrective and remedial action in the matter. That brooked no delay.

12. It is also submitted that the High Court mainly recorded three aspects to interfere with the impugned office order. First,

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<sup>6</sup> (2007) 5 SCC 65

that the office order does not state that the Director Incharge was not competent to issue the appointment letter. Additionally, there is no tittle of indication in the said order that the appointing authority committed any illegality in making appointment. Second, the reason for termination of services of respondent was not made known to him by issuing a notice or by providing him an opportunity of hearing. Third, the Tribunal took extraneous facts into account to uphold the subject office order, by adverting to grounds not referred to therein. It is submitted that none of the above, dealt with the core reason noted in the subject office order - that the same was necessitated as an illegal appointment had been made by the then Director Incharge H.S. Rathore, Agriculture Officer and without prior approval of the competent authority. The appellant therefore, submits that the impugned decision of the High Court is manifestly wrong and deserves to be set aside and the order of the Tribunal ought to be restored, upholding the office order dated 29.08.2000.

13. Per contra, the respondent has supported the reasons recorded by the High Court and vehemently contends that no interference is warranted. According to the respondent, the appointment of the respondent has been made after adhering to

necessary formalities pursuant to a public advertisement, wherein the respondent emerged as the successful candidate. Only thereafter he was appointed to the post of Veterinary Compounder. It is submitted that the respondent acquired an indefeasible right to remain on that post and in service. According to the respondent, his services could not be terminated without affording opportunity of hearing. Only upon affording opportunity, the respondent could have been able to point out that there was no illegality in his appointment. Inasmuch as lack of approval of the competent authority before issuance of the letter of appointment, does not render the appointment void but at best, an irregularity. Since the appointment was not void ab initio, no termination order could be issued without affording opportunity to the respondent. The respondent has relied on the decisions of this Court in the case of ***The Remington Rand of India Ltd. Vs. The Workmen***<sup>7</sup>, ***Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt.) (Dead) and Anr.***<sup>8</sup> and ***Montreal Street Railway Company Vs. Normandin***<sup>9</sup>. The respondent contends that the mere fact that the High Court has not dealt with the reason stated in the subject office order about

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<sup>7</sup> (1968) 1 SCR 164

<sup>8</sup> (1995) 5 SCC 159

<sup>9</sup> AIR (1917) Privy Council 142

the lack of approval of competent authority, can be no basis to whittle down the indefeasible right enured to him. Further, deprivation of opportunity of hearing before passing the termination order was fatal as the said order entailed civil consequences to him. The respondent prays for dismissal of the appeal.

14. We have heard the learned counsels for appellants Mr. A.K. Panda, Senior Advocate, Mrs. C.K. Sucharita, Mr. Shailender Saini, Mr. Raj Bahadur and Mr. D.S. Mahra, and Dr. Manish Singhvi, Mr. Shailja Nanda Mishra, Mr. Satyendra Kumar, Mr. Yuvraj Simant and Mr. Irshad Ahmad, learned counsels for respondent.

15. Reverting to the subject office order, we are in agreement with the stand taken by the appellant that the same is a simpliciter termination and is no reflection on the conduct of the respondent. It merely explicates that his appointment was illegal having been made by the then Director Incharge H.S. Rathore, Agriculture Officer and without prior approval of the competent authority. No more and no less.

16. We shall now consider the efficacy of the reason so recorded in the office order. The recruitment procedure in relation to the post of Veterinary Compounder is governed by the statutory rules titled 'Central Cattle Breeding Farms (Class III and Class IV posts) Recruitment Rules, 1969, as amended from time to time and including the executive instructions issued in that behalf. As per the stated dispensation for such recruitment, the appointment letter could be issued only by an authorised officer and after grant of approval by the competent authority. Nowhere in the Original Application filed by the respondent, it has been asserted that such prior approval is not the quintessence for issuing a letter of appointment.

17. For taking this contention forward, we may assume, for the time being, that the then Director Incharge H.S. Rathore, Agriculture Officer had the authority to issue a letter of appointment. Nevertheless, he could do so only upon obtaining prior written approval of the competent authority. No case has been made out in the Original Application that due approval was granted by the competent authority before issue of the letter of appointment to the respondent. Thus, it is indisputable that no prior approval of the competent authority was given for the

appointment of the respondent. In such a case, the next logical issue that arises for consideration is: whether the appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non grant of opportunity may not vitiate the final decision of termination of his services. The Tribunal has rightly held that in absence of prior approval of the competent authority, the Director Incharge could not have hastened issuance of the appointment letter. The act of commission and omission of the then Director Incharge would, therefore, suffer from the vice of lack of authority and nullity in law.

18. There is yet another aspect which has been glossed over by the High Court. The subject office order dated 29.08.2000 opens with the statement that the same was issued in compliance with the Ministry's decision vide letter No.8-6/1999-ADMN.III dt.18.08.2000. By reference to the said communication-cum-decision of the Ministry, it stood incorporated in the subject office order. Besides, the subject office order explicitly states that the appointment of the respondent was illegally made by the then Director Incharge H.S. Rathore, Agriculture Officer. This reason

of illegal appointment takes within its fold the unilateral constitution of the selection Board (not in accordance with the prescribed constitution of the selection Board) and also H.S. Rathore nominating himself as the Chairman of such Board, although disqualified to be on the Board because the candidate was related to him. As a result, the Ministry took holistic decision on 18.08.2000 at the highest level after reckoning all aspects of the matter including that it was not just a solitary appointment of the respondent, but also other appointment letters issued by H.S. Rathore under his signature. All such appointments have been nullified by the Ministry in the same manner in addition to initiating departmental action against H.S. Rathore. Tersely put, all appointments made by H.S. Rathore came under the scanner as being fraudulent and without authority. Such appointments would obviously be a nullity in law.

19. The Tribunal had justly relied on the exposition in the cases of **M. Bhaskaran** (supra) and in particular, **Kendriya Vidyalaya Sangathan** (supra). In the latter case, in paragraph 5 of the reported decision, while dealing with a similar situation, the Court observed that if the appointment letters are nullity, having been issued by an officer who did not wield authority to do so,

there was no question of observance of principles of natural justice even though the affected party was not before the Court.

20. In the case of ***State of Manipur*** (supra), the appointment letters were cancelled on the ground that the same were issued without the knowledge of the department of the State. The Court after advertizing to the reported decisions concluded that the candidates were not entitled to hold the posts and in a case of such nature, principles of natural justice were not required to be complied with, particularly when the same would result in futility. It may be useful to advert to paragraph 22 of the reported decision, which reads thus:

“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*<sup>10</sup>.”

(emphasis supplied)

21. In paragraph 30 of the reported decision, the Court adverted to the exposition in ***M.C. Mehta Vs. Union of India & Ors.***<sup>11</sup> which evolved the ‘useless formality’ theory. It is apposite to

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<sup>10</sup> (1991) Supp. (1) SCC 331

<sup>11</sup> (1999) 6 SCC 237

reproduce paragraphs 30 to 32 of the reported judgment, which read thus:

"30. In *M.C. Mehta Vs. Union of India* this Court developed the "useless formality" theory stating: (SCCPP.246-47, para 22)

"More recently Lord Bingham has deprecated the 'useless formality' theory in R.v. Chief Constable of the Thames Valley Police Forces, ex p Cotton<sup>12</sup> by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary? 1991 PL, p.64.) A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that Malloch and Glynn were wrongly decided. Foulkes (Administrative Law, 8<sup>th</sup> Edn., 1996, p.323), Craig (Administrative Law, 3<sup>rd</sup> Edn., p. 596) and others say that the Court cannot prejudge what is to be decided by the decision-making authority. De Smith (5<sup>th</sup> Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5<sup>th</sup> Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala Vs. S.K. Sharma*<sup>13</sup>, *Rajendra Singh Vs. State of M.P.*<sup>14</sup> that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit

<sup>12</sup> (1990) IRLR 344

<sup>13</sup> (1996) 3 SCC 364

<sup>14</sup> (1996) 5 SCC 460

and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.”

(emphasis in original)

31. In *Kendriya Vidyalaya Sangathan* it was held: (SCC p. 505, para5)

“It is clear that if after the termination of services of the said Dr. K.C. Rakesh, the orders of appointment are issued, such orders are not valid. **If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise.”**

32. In *Bar Council of India Vs. High Court of Kerala*<sup>15</sup> it was stated : (SCC p.323, para45)

“**Principles of natural justice, however, cannot be stretched too far.** Their application may be subject to the provisions of a statute or statutory rule.”

(emphasis supplied)

In the present case, the appointment letter was admittedly issued without the approval of the competent authority.

22. In ***Dhirender Singh & Ors. Vs. State of Haryana & Ors.***<sup>16</sup>, termination of the appellant therein albeit without notice, was not interfered with by the Court as admittedly the same was not approved by the competent authority. The underlying principle will apply *proprio vigore* to the present case, as the letter of appointment has been issued by an officer who had no authority to do so and also because it was issued without waiting

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<sup>15</sup> (2004) 6 SCC 311

<sup>16</sup> (1997) 2 SCC 712

for the approval of the competent authority. Resultantly, there was no necessity to afford opportunity to the respondent before issuing the letter of cancellation of such appointment. The mere fact that such letter of appointment had been issued in favour of the respondent does not bestow any right in his favour much less to insist for an opportunity of being heard.

23. Reverting to the impugned decision of the High Court, the High Court has not analysed the efficacy of the crucial reason recorded in the subject office order dated 29.08.2000 in its correct perspective. Indeed, the High Court has noted that prior approval of the competent authority was not mandatory. That observation, in our opinion, is manifestly wrong. We affirm the view expressed by the Tribunal that the appointment of respondent was not in conformity with the governing Rules and executive instructions in that regard.

24. Further, the High Court could not have interfered with the subject office order solely on the ground that it was issued without affording an opportunity to the respondent. The other reason which had weighed with the High Court, in our opinion, will be of no avail to the fact situation of the present case. To wit,

the fact that the subject office order does not attribute any motives to the then Director Incharge, can be no basis to invalidate the same. In our opinion, the office order records just and tangible reason as to why the appointment of the respondent is illegal. Unless the core reason mentioned in the subject office order was found to be untenable, the High Court could not have concluded that the subject office order was vitiated merely because it was issued without notice or lack of opportunity to the respondent. Similarly, the fact that the Tribunal has taken note of other grounds urged by the parties (other than the reason noted in the subject office order), *per se*, cannot be the basis to invalidate the subject office order which is otherwise just and proper. The High Court could have ignored those other reasons/grounds taken into account by the Tribunal.

25. Reverting to the decisions relied upon by the respondent, we fail to understand as to how the decision in the case of ***The Remington Rand of India Ltd.*** (supra) will be of any avail to the respondent. In that case, the Court was called upon to consider the effect of not publishing the award passed by the Hon'ble Tribunal within the statutory period. In the context of that question, the Court opined that the provision in Section 17(1) of

the Industrial Disputes Act was merely directory and not mandatory and on that basis concluded that publication of award beyond 30 days would not make it invalid. In the present case, the letter of appointment could be issued by the designated director and only after grant of prior approval from the competent authority (the superior authority in the hierarchy of administrative set up). Without such approval, the then Director Incharge in no case could have rushed through the process of issuing the letter of appointment, an action which was without authority of law and a nullity.

26. In the case of **Karnal Improvement Trust, Karnal** (supra), the Court considered the distinction between ministerial acts and statutory or quasi judicial functions under the statute and, in that context, observed that something should be done or in a particular manner and expressly declaring what shall be the consequence of non compliance, the effect thereof would be to treat the infraction as a mere directory requirement and not invalidate the action, so as to disregard the same. The principle expounded in this decision will be of no avail to the respondent. In light of factual matrix of this case, the letter of appointment in favour of the respondent was issued illegally by the Director

Incharge H.S. Rathore, Agriculture Officer and without prior approval of the competent authority. It was a nullity.

27. Even the case of ***Montreal Street Railway Company*** (*supra*) cannot come to the rescue of the respondent. In the present case, the requirement to obtain prior approval of the competent authority has been made an essential requirement and only then would the appointing authority be competent to issue letter of appointment. For, after the proposal is submitted for approval to the competent authority through proper channel by the official duly authorised to do so, the competent authority would reckon all aspects of the matter including whether the selection process has been properly followed in all respects. That would include the question such as whether the then Director Incharge could have constituted the Board of seven members, contrary to the established norms and moreso to act as Chairman of such a Board after full knowledge that the candidate appearing for the interview was his relative.

28. We have no hesitation in concluding that in the fact situation of the present case, giving opportunity of hearing to the respondent before issuance of the subject office order was not an

essential requirement and it would be an exercise in futility. For the view that we have taken, the exposition in **D.K. Yadav** (*supra*), which commended to the High Court, in our opinion, has no application to the fact situation of the present case concerning an appointment which is *void ab initio* and nullity.

29. Accordingly, we set aside the impugned judgment and order of the High Court and restore the judgment of the Central Administrative Tribunal dated 06.06.2002, dismissing the Original Application filed by the respondent.

30. The appeal succeeds in the above terms with no order as to costs.

.....CJI.  
**(Dipak Misra)**

.....J.  
**(A.M. Khanwilkar)**

.....J.  
**(Dr. D.Y. Chandrachud)**

**New Delhi;**  
**March 13, 2018.**