

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

**W.P.(C) Nos.24643, 24646, 24648,
24694 & 24835, of 2022**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

.....

**Abinash Baliarsingh &
Another**

....

Petitioners

Mr. S.D. Routray, Advocate

Mr. M.K. Mohanty, Advocate

(in W.P.(C) No.24835 of 2022)

Mr. J. Patnaik, Senior Advocate
with Mr. B.S. Rayaguru, Advocate

(In W.P.(C) No.24694 of 2022)

-versus-

***State of Odisha and
Others***

....

Opposite Parties

Mr. R.N. Mishra, AGA

**W.P.(C) No.23215 of 2022 &
W.P.(C) Nos.35 & 2579 of 2023**

Santanu Kumar Moharana

Petitioner

Mr. S. Mohanty, Advocate

Mr. S.K. Pattanaik, Advocate

(in W.P.(C) No.35 of 2023)

Mr. B.K. Routray, Advocate

(in W.P.(C) No.2579 of 2023)

-versus-

Govt. of Odisha and Others

Opp. Parties

Mr. RN. Mishra, AGA

**W.P.(C) Nos.23404, 24014, 37048 of 2022 &
W.P.(C) No.2609 of 2023**

Bibana Aprabhan Ranasingh

Petitioner

Mr. B.P. Rath, Advocate
Mr. K.K. Swain, Advocate
(in W.P.(C) No. 37048 of 2022)
Mr. J.K. Digal, Advocate
(in W.P.(C) No.24014 of 2022)

-versus-

The Collector, Kandhamal

Opp. Parties

Mr. RN. Mishra, AGA

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:13.07.2023 and Date of Judgment:13.07.2023

Biraja Prasanna Satapathy, J.

1. These matters are taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Since the issue involved in all these Writ Petitions are co-related, all the Writ Petitions were heard analogously and disposed of by the present common order.

3. For the sake of brevity the Writ Petition in W.P.(C) No.24643 of 2022 is taken as the lead case and the parties described in the Writ Petition are the parties so described in the present order.

4. While W.P.(C) Nos.24643, 24646, 24648, 24694 and 24835 of 2022 have been filed challenging the order of retrenchment issued by the Collector, Kandhamal-Opposite Party No.3 on 17.09.2022 (hereinafter called as the 1st batch of writ petition), Writ Petition No.23215 of 2022, W.P.(C) No.35 of 2023 and W.P.(C) No.2579 of 2023 (hereinafter called as the 2nd batch of writ petition) have been filed by the petitioners seeking their appointment in terms of the fresh select list so issued after the order of termination issued by the Collector on 17.09.2022. Similarly Writ Petition Nos.23404 of 2022, 24014 of 2022, 37048 of 2022 and 2609 of 2023 (hereinafter called as the 3rd batch of writ petition) have been filed with a prayer to direct the Opposite Party-Collector to allow the

petitioners to verify their documents for the purpose of their selection.

4.1. Since the petitioners in W.P.(C) No.24643 of 2022 and batch have challenged the order of retrenchment so issued by the Opposite Party No.3 on 17.09.2022 and petitioners in the connected Writ Petitions seek consequential relief of appointment basing on the fresh merit list so prepared by the Opposite Party No.3 after issuance of the order of termination on 17.09.2022, this Court for effectual adjudication of the rival claim decided to take up the issue raised in W.P.(C) No.24643 of 2022 and batch, as the prayer made in the 2nd & 3rd batch of writ petition depend on the prayer made in the 1st batch of writ petition.

5. It is the sole contention of the learned counsels appearing for the petitioners in W.P.(C) No.24643 of 2022 and batch that pursuant to the advertisement issued by the Collector, Kandhamal on 31.12.2021, all of them participated in the selection process and on being found suitable they were issued with the order of

appointment. Pursuant to such order they also joined in their respective posts. While continuing as such the order of termination was passed by the self-same Collector vide the impugned order dated 17.09.2022 without issuing any prior show cause and without following the principle of natural justice. Accordingly, it is contended that since the impugned order of termination has been passed in complete violation of the principle of natural justice, in view of the decisions of the Hon'ble Apex Court as well as of this Court governing the field, the order of termination so passed on 17.09.2022 is not sustainable in the eye of law and needs interference of this Court. Mr. Routray in support of his submission relied on the following decisions:-

5.1. Hon'ble Apex Court in 2017 (II) OLR (SC)-503 in the case of **State of Punjab and Ors. vs. The Senior Vocational Staff** in Para-20 of the judgment has held as follows:-

"20. It is now well settled that no orders causing civil consequences can be passed, without

observing rules of natural justice as it was held in *Bhagwan Shukla vs. Union of India & Ors.* AIR 1994 SC 2480 wherein it was held as under:

“3. We have heard learned counsel for the parties. That the petitioner’s basic pay had been fixed since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.07.1991. Which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of Central Administrative Tribunal dated 17.09.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.07.1991 reducing the basic pay of the appellant From Rs.190 to Rs.181 w.e.f. 18.12.1970.”

5.2. In W.P.(C) No. 8888 of 2005 in the case of **Sarat Chandra Dash vs. Orissa State Cooperative Agricultural & Rural Development Bank Ltd. And another**, this Court in para 15 to 21 has held as follows:-

“15. Natural justice, another name of which is common sense justice, is the name of those principles which constitute the minimum requirement of justice and without adherence to which justice would be a travesty. Natural justice accordingly stands for that fundamental quality of

fairness which being adopted, justice may not only be done but also appears to be done.

16. In **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248, the apex Court countered natural justice with 'fair play in action'. The soul of natural justice is 'fair play in action'.

17. In **Bhagwan v. Ramchand**, AIR 1965 SC 1767, the apex Court held that the rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice.

18. In **Sukdev Singh v. Bhagatram**, AIR 1975 SC 1331, the apex Court held that whenever a man's rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice.

19. In **State of U.P. v. Vijay Kumar Tripathi**, AIR 1995 SC 1130, the apex Court held that it is important to note in this context the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration.

20. In **Nagarjuna Construction Company v. Government of Andhra Pradesh**, (2008) 16 SCC 276, the apex Court held that what is meant by the term 'principles of natural justice' is not easy to determine. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

21. In **Swadeshi Cotton Mills v. Union of India**, AIR 1981 SC 818, the apex Court held that principles of natural justice are principles ingrained into the conscience of men. Justice being based substantially on natural ideals and human values, the administration of justice here is freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. Principles/rules of natural justice are not embodied principles/rules. Being means to an end and not an end in

them, it is not possible to make an exhaustive catalogue of such rules (principles). The principles of natural justice operate as checks on the freedom of administrative action. The observance thereof is the pragmatic requirement of fair play in action.”

5.3. This Court held in W.P.(C) No. 8832 of 2010, in the case of **Subash Chandra Sahu vs. Union of India and others** held in paragraph 6 to 14 has held as follows:-

“6. On the basis of the undisputed pleaded facts, it is to be examined whether the petitioner has been provided with opportunity of hearing in compliance of principles of natural justice.

7. In **Bhagwan v. Ramchand**, AIR 1965 SC 1767, the apex Court held that the rule of law demand that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice.

8. In **Sukdev Singh v. Bhagatram**, AIR 1975 SC 1331, the apex Court held that whenever a man's rights are affected by decisions taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice.

9. The soul of natural justice is 'fair play in action'. In **Maneka Gandhi v. Union of India**, (1978) 1 SCC 24, the Hon'ble Justice P.N. Bhagwati, J. as his lordship then was, has countered natural justice with 'fair play in action'.

In **HK (An Infant) in re**, (1967) 1 AII ER 226 (DC), Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'.

In **Fairmount Investment Ltd. v. Secretary of State of Environment** (1976) 2 AII ER 865 (HL), Lord Russel of Kilowen described the natural justice as 'a fair crack of the whip'.

In **R.V. Secretary of State for Home Affairs**, (1977) 3 All ER 452 (DC & CA), Geoffrey Lane, LJ, in defining the natural justice used the phrase 'common fairness'.

10. In **Swadeshi Cotton Mills v. Union of India**, AIR 1981 SC 81, the apex Court considered the meaning of 'natural justice' to the following effect:-

"The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth", "Natural Justice" by Paul Jackson, 2nd Ed., Page 1. In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in the conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice."

11. In **Swadeshi Cotton Mills (supra)**, the apex Court held as follows:

"Principles of natural justice are principles ingrained into the conscience of men. Justice being based substantially on natural ideals and human values, the administration of justice here is freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. Principles/rules of natural justice are not embodied principles/rules. Being means to an end and not an end in them, it is not possible to make an exhaustive catalogue of such rule (Principles)."

12. In **State of U.P. V. Vijay Kumar Tripathy**, AIR 1995 SC 1130, the apex Court further held that it is important to note that the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principle of natural justice, but in that event the validity of that rule may fall for consideration.

13. In **Nagarjuna Construction Company Limited v. Government of Andhra Pradesh**, (2008) 16 SCC 276, the apex Court held that over the years by a process of judicial interpretation two rules have been evolved as representing the fundamental principles of natural justice in judicial process including therein quasi-judicial and administrative process, namely, an adjudicator should be disinterested and unbiased (*nemo iudex in causa sua*) and that the parties must be given adequate notice and opportunity to be heard (*audi alteram partem*). They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men.

14. Therefore, principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. The Supreme Court has time and again equated the principles of natural justice with fairness in action, therefore, the Court has insisted upon not so much to act judicially but acting fairly, justly, reasonably and impartially.”

5.4. This Court in W.P.(C) Nos. 19262 & 19527 of 2009, in the case of **Natabara Maharana vs. Collector-cum-Chairman, Sarva Sikhya Abhiyan, Dhenkanal and others & Nibedita Patra vs. Collector-cum-Chairman, Sarva Sikhya Abhiyan, Dhenkanal and others** in paragraph 11 has held as follows:-

“11. The soul of natural justice is ‘fair play in action’.

In HK (An Infant) in re, 1967 1 All ER 226 (DC), Lord Parker, CJU, preferred to describe natural justice as ‘a duty to act fairly’.

In Fairmount Investments Ltd. V. Secy of State for Environment, 1976 2 ALL ER 865 (HL), Lord Russel of Killowen somewhat picturesquely described natural justice as 'a fair crack of the whip'.

In R. v. Secy. Of State for Home Affairs, ex p. Hosenball, Geoffrey Lane, LJ, 1977 3 All ER 452 (DC & CA), preferred the homely phrase 'common fairness' in defining natural justice. Natural justice, another name of which sense justice, is the name of those principles which constitute the minimum requirement of justice and without adherence to 23 which justice would be a travesty. Natural justice accordingly stands for that "fundamental quality of fairness which being adopted, justice not only be done but also appears to be done".

5.5. This Court held in W.P.(C) No.14197 of 2019, in the case of **Sidheswar Mahila Mandal and another vs. State of Odisha and others** in paragraph 8 to 16 has held as follows:-

"8. The word 'nature' liberally means the innate tendency or quality of things or objects and the word 'just' means upright, fair or proper. The expression 'natural justice' would, therefore, mean the innate quality of being fair.

9. Before the epoch making decision in **Ridge v. Baldwin of the House of Lords**, 1963 All E.R. 66= 1964 AC 40, it was generally thought that the rules of natural justice applied only to judicial or quasi-judicial proceedings; and so, whenever breach of the rule of natural justice was alleged, courts used to first ascertain whether the impugned action was taken by the authority in exercise of its administrative or quasi-judicial power. The scene has totally changed now. Over the years, natural justice has grown into a widely pervasive rule affecting large areas of administrative action.

10. The soul of natural justice is 'fair play in action' 12 In **HK (An Infant) in re**, 1967 1 All ER 226 (DC), Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'.

In **Fairmount Investments Ltd. v. Secy of State for Environment**, 1976 2 All ER 865 (HL), Lord Russel of

Killowen somewhat picturesquely described natural justice as 'a fair crack of the whip'

In **R. v. Secy. Of State for Home Affairs, ex p. Hosenball, Geoffrey Lane, LJ**, 1977 3 All ER 452 (DC & CA), preferred the homely phrase 'common fairness' in defining natural justice.

11. **A.K. Kraipak and others v. Union of India**, AIR 1970 SC 150= (1969) 2 SCC 262, is a landmark in the growth of this doctrine. Speaking for the Constitution Bench, Hegde, J. observed thus:

"If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in 13 character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have far reaching effect than a decision in a quasi-judicial enquiry".

In **Maneka Gandhi v. Union of India**, AIR 1978 SC 597 = (1978) 1 SCC 248, law has done further blooming of this concept. This decision has established beyond doubt that even in an administrative proceeding involving civil consequences doctrine of natural justice must be held to be applicable.

12. In **Swadeshi Cotton Mills v. Union of India**, AIR 1981 SC 818, the meaning of 'natural justice' came for consideration before the apex Court and the apex Court observed as follows:-

"The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straightjacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self evident and unarguable truth". "Natural justice" by Paul Jackson, 2nd Ed., page-1. In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice."

13. In **Basudeo Tiwary v Sido Kanhu University and others** (1998) 8 SCC 194, the apex Court held that natural justice is an antithesis of arbitrariness. It, therefore, follows that audi alteram partem, which is facet of natural justice is a requirement of Art.14.

14. In **Nagarjuna Construction Company Limited v. Government of Andhra Pradesh**, (2008) 16 SCC 276, the apex Court held as follows:

“The rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice. Thus, whenever a man’s rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice. It is important to note in this context the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration.”

15. The apex Court in **Uma Nath Panday and others v State of U.P. and others**, AIR 2009 SC 2375, held that natural justice is the essence of fair adjudication, 15 deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

16. Natural justice, another name of which is common sense justice, is the name of those principles which constitute the minimum requirement of justice and without adherence to which justice would be a travesty. Natural justice accordingly stands for that “fundamental quality of fairness which being adopted, justice not only be done but also appears to be done”.”

6. Learned Addl. Govt. Advocate though supported the impugned order dated 17.09.2022 and made his submission basing on the stand taken in the counter affidavit, but contended that since the petitioners were provided with appointment by the Opposite Party No.3

without following the true implication of the relaxation indicated in para-6 of the draft advertisement issued on 24.12.2021 by the Govt.-Opposite Party No.1 under Annexure-1 and para-6 the advertisement issued by the Opposite Party No.3 on 31.12.2021 under Annexure-2, basing on the instruction issued by the Govt. on 13.09.2022 & 15.09.2022, the petitioners in the 1st batch of writ petitions were terminated from their services vide order dated 17.09.2022. Learned Addl. Govt. Advocate contended that since by misinterpreting the provision as contained in para 6 of the draft advertisement as well as in the original advertisement issued under Annexures-1 & 2, meritorious candidates were left out from the purview of selection and the petitioners since have secured less mark and were provided with the appointment, they were terminated from their services vide order dated 17.09.2022. Accordingly, it is contended that there was no requirement to follow the principle of natural justice. It is accordingly contended that no illegality has

been committed by the Opposite Party No.3 in issuing the order of termination vide order dated 17.09.2022.

7. Learned counsels appearing for private Opposite Parties in W.P.(C) No.24643 of 2022 and learned counsels appearing in the connected 2nd and 3rd batch of Writ Petitions made their submissions in the line of the submissions advanced by the learned Addl. Govt. Advocate. It is contended that because of interim order passed by this Court, the petitioners in the connected Writ Petitions are unable to get the benefit of appointment even though in the subsequent merit list published by the Opposite Party No.3 after issuing the order of termination on 17.09.2022, their names were reflected. This Court taking into account the non-compliance of the principle of natural justice, when put a specific question in that regard learned counsels appearing in the 2nd & 3rd batch contended that since the petitioners were appointed by the Opposite Party No.3 illegally, there was no requirement to follow the principle of natural justice.

8. Having heard learned counsel for the parties and after going through the materials placed, this Court found that basing on the advertisement issued on 31.12.2021 and 04.04.2022 , the petitioners in the 1st batch of Writ Petitions after facing due recruitment process were provided with appointment as Initial Appointee Teachers in TGT (Arts). Pursuant to such order of appointment, they were allowed to join in their respective posts. As found from the records basing on the communication issued by the Govt.-Opposite Party No.1 on 13.09.2022, Opp. Party No.3 terminated the petitioners in the 1st batch of writ petitions on 15.09.2022 i.e. within 2 (two) days of the receipt of such communication. Since prior to issuance of order termination on 17.09.2022, no opportunity of hearing was ever given to the petitioners in the 1st batch of writ petitions which is apparent on the face of record, this Court on the ground of non-compliance of principle of natural justice and placing reliance the decisions as cited supra is inclined to quash the order of termination, so passed by the O.P. No.3 on 17.09.2022.

While quashing the same, this Court directs Opposite Party No.1 to follow the principle of natural justice and pass a fresh order in accordance with law with regard to the appointment and continuance of the petitioners in their services in the 1st batch of writ petition.

8.1. As agreed by the learned counsel appearing for the respective parties, it is observed that the petitioners in the 1st batch since were duly appointed, they will be issued with respective show causes by O.P. No.1 through the Collector-O.P. No.3 within a period of 2 weeks from the date of receipt of this order. It is further observed that on receipt of the show cause, the petitioners in the 1st batch of writ petitions shall file their reply within a further period of 4 (four) weeks positively and no further time will be allowed for filing of such reply to the show-cause. On receipt of the reply to the show cause from the petitioners, Opposite Party No.1 shall take a fresh decision with regard to selection and appointment of the petitioners in the 1st batch of

the writ petitions in accordance with law in which this Court expresses no opinion.

As further agreed by learned counsels appearing for the respective parties status-quo as on 17.09.2022 shall continue till a fresh decision is taken by the Government-O.P. No.1 as directed.

9. All the Writ Petitions are accordingly disposed of.

10. Registry is directed to attach photocopy of this order in all connected Writ Petitions.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 13th July, 2023/Basudev