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IN THE HIGH COURT OF ORISSA : CUTTACK.

WPC (OAC) No. 2695 of 2015
(An Application under Articles 226 and 227
of the Constitution of India, 1950)

AFR

Sujata Das ... Petitioner

VERSUS

State of Odisha
and Others ... Opposite party

Advocates appeared in the case:

For the Petitioner : M/s. Kunal Kumar Swain
and
Soubhagya Chandra Dev Dash,
Advocates

For the Opposite parties : Mr. Ramanath Acharya,
Standing Counsel
(School and Mass Education)

CORAM:
JUSTICE MURAHARI SRI RAMAN

Date of Hearing: 17.02.2023 :: Date of Judgment: 01.03.2023

JUDGMENT

MURAHARI SRI RAMAN, J.—

1. The petitioner, Junior Clerk, approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack under Section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash revised Last Pay Certificate issued *vide* Office Order

bearing Memo No.107 dated 24th July, 2015 (Annexure-7) cancelling Last Pay Certificate issued *vide* Letter No.91, dated 25.05.2015 as communicated by Headmistress of Government Girls' High School, Kazibazar, Cuttack and Office Order No.116, dated 7th July, 2015 cancelling one time refundable of Rs.7,500/- (which was sanctioned by Office Order No.75, dated 18.05.2015) communicated by Headmistress of Government Girls' High School, Badambadi, Cuttack (Annexure-8), craving for following relief:

*"*** the impugned orders under Annexures-7 and 8 withdrawing sanction of annual increments as well as GIS under Annexures-7 and 8 may be quashed/set aside and the applicant may be allowed to avail the benefit of annual increments and GIS as she was getting earlier."*

Fact of the case:

2. Shorn off irrelevant detail narration of fact, suffice it for the purpose of present case to describe that the petitioner-Sujata Das pursuant to Officer Order No.893, dated 08.08.1990 issued by the District Adult Education Officer, Cuttack was appointed provisionally on *ad hoc* basis for a period of 89 days from the date of joining in the post of Typist against the post of Stenographer. She was allowed scale of pay of Rs.950/- — Rs.1,500/- with usual D.A. and A.D.A. as admissible under Rules. Copy of said Office Order dated 08.08.1990 stated thus:

"Mrs. Sujata Das, C/o. Sri Dhuleswr Das, Vill.: Jagannathpur, P.O.: Balikuda, P.S.: Balikuda, District: Cuttack, an outsider, ***after formal test is appointed provisionally as Typist against the post of Stenographer on ad hoc basis*** *for 89 days from the date she actually reports to duty* ***in the scale of Rs.950 to 1500 with***

usual D.A. and A.D.A. and other allowances as admissible under Rules *till the post is filled up in regular manner by observing recruitment rule.*

The post is purely temporary basis and can be terminated at any time without issue of prior notice."

2.1. While continuing with such arrangement on the basis of *ad hoc* appointment with extensions from time to time with one day break between two spells, by virtue of Office Order No.55, dated 06.04.1999 issued by the District Mass Education Officer, Cuttack, she was allowed to work as Junior Clerk-*cum*-Typist. Said Office Order runs as follows:

"As per the Orders of the Hon'ble OAT, Bhubaneswar vide Order No.5, dated 18.02.1999, Mrs. Sujata Das who is working as ***Junior Clerk-cum-Typist*** *on* ***ad hoc basis*** *is hereby allowed to work as such* ***till fill up the post in a regular manner*** *on ad hoc basis i.e. 89 days with one day gap with effect from 01.04.1999* ***against the post of Junior Clerk-cum-Typist*** *until further Order in the* ***scale of pay of Rs.3,050/- — 75 — 3,950 — 80 — 4,590/- with usual D.A. and other Allowances as admissible from time to time under Rule.***

This adjustment is purely on temporary basis and she will be terminated at any time without assigning any reasons thereof."

2.2. While continuing as such as Junior Clerk-*cum*-Typist in the Office of District Mass Education, Cuttack, the petitioner was repositioned/adjusted against the post of Junior Clerk in the Office of the Headmistress Government Girls' High School, Kazibazar, Cuttack *vide* Office Order No.19676, dated 28.11.2013 issued by the District Education Officer. Said Office Order in Annexure-4 reads as follows:

"Consequent upon reorganization of School and Mass Education Department and in pursuance of Government Order

No.11940/S&ME, dated 18.05.2013 and Notification No.23905/S&ME, dated 21.10.2003 and after due approval of the Director Secondary Education, Odisha, Bhubaneswar vide Order No.48543, dated 25.11.2013, Smt. Sujata Das working as Junior Clerk in the Office of District Mass Education, Cuttack, is hereby repositioned/adjusted against the post of Junior Clerk on his own scale of pay at the Office of the Headmistress, Government Girls' High School, Kazibazar, Cuttack. She is hereby deemed to have been relieved of her duties in the forenoon of dt.28.11.2013, so as to enable here to join in her new station on reposition/adjustment by 30.11.2013 F.N. without fail.

She is directed to hand over the detail charges of her respective office/section by 30.11.2013 A.N. The salary of relieved employee for the month of December, 2013 onwards will be drawn at her new station."

2.3. While continuing in the Government Girls' High School, Kazibazar, Cuttack, the petitioner was relieved and allowed to join in the Office of Government Girls' High School, Badambadi, Cuttack by virtue of Office Order No.79, dated 17.06.2015 issued by the Headmistress, Government Girls' High School, Kazibazar, Cuttack (Annexure-6), which reads thus:

"In pursuance to the Directorate Order No.18945, dated 23.05.2015 and District Education Office Order No.1520 (ND), dated 12.06.2015, ***Smt. Sujata Das, Junior Clerk, Government Girls' High School, Kazibazar, Cuttack*** *is hereby relieved of her duties in the A.N. on dtd.17.06.2015 to enable her to* ***join as such in the Office of the Government Girls' High School, Badambadi, Cuttack.****"*

2.4. However, by Office Order *vide* Memo No.107, dated 24.07.2015 (Annexure-7), the Last Pay Certificate has been revised and Last Pay Certificate issued *vide* Letter No.91, dated 25.05.2015 has been cancelled by the Headmistress, Government Girls' High School, Kazibazar, Cuttack. Further, by Office Order No.116,

dated 07.07.2015 issued by the Headmistresss, Government Girls' High School, Badambadi, Cuttack, (Annexure-8) it has been directed as follows:

"In pursuance of G.O. No.41803, dated 23.09.2013 of Government of Odisha, Finance Department, the GIS one time refundable Rs.7,500/- (rupees seven thousand five hundred) only in favour of Smt. Sujata Das, Junior Clerk, Office of the Headmistress Government Girls' High School, Kazibazar, Cuttack which is sanctioned vide this Office Order No.75, dated 18.05.2015 is hereby cancelled."

2.5. Dissatisfied with such action of the Headmistress of Government Girls' High School, Kazibazar, Cuttack and the Headmistress of Government Girls' High School, Badambadi, Cuttack, the petitioner has proceeded to assail by way of filing Original Application registered as O.A. No.2695 (C) of 2015, wherein by Order dated 04.08.2015 the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack issued notice and issued the following interim direction:

"So far as prayer for interim order is concerned operation of Orders dated 24.07.2015 (Annexure-7) and dated 07.07.2015 (Annexure-8) shall not be acted upon till filing of counter."

2.6. The opposite party No.3-District Education Officer has filed counter on 29.03.2019.

2.7. After abolition of the Odisha Administrative Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E).], dated 2nd August, 2019, said Original Application has been converted to Writ Petition before this Court and renumbered as WPC (OAC) No.2695 of 2015.

Argument(s) advanced by the learned Counsel for the petitioner:

3. Revised Last Pay Certificate issued *vide* Office Order bearing Memo No.107 dated 24th July, 2015 (Annexure-7) cancelling Last Pay Certificate issued *vide* Letter No.91, dated 25.05.2015 as communicated by Headmistress of Government Girls' High School, Kazibazar, Cuttack and Office Order No.116, dated 7th July, 2015 cancelling one time refundable of Rs.7,500/- (which was sanctioned by Office Order No.75, dated 18.05.2015) communicated by Headmistress of Government Girls' High School, Badambadi, Cuttack (Annexure-8), are untenable since it has been clearly mentioned in Office Order dated 28.11.2013 that consequent upon reorganization of School and Mass Education Department and pursuant to the Government Order dated 18.05.2013 and Notification dated 25.11.2003 and "after due approval of the Director, Secondary Education, Odisha, Bhubaneswar *vide* Order No.48543, dated 25.11.2013", the petitioner has been "repositioned/adjusted against the post of Junior Clerk" with its scale of pay at Government Girls' High School, Kazibazar, Cuttack.

3.1. In the Government of Odisha in Education Department Letter No. XVIE-G-47/90/9214/E, dated 27.02.1992, it has been directed as follows:

"I am directed to invite a reference to Directorate, Secondary Education, Odisha Letter No.30234-G, dated 25.10.1990 and to say that in pursuance of the Odisha Administrative Tribunal, Odisha, Original Application No.333/90 which is based on the Supreme Court decision (AIR 1987 SC 478) the ad hoc appointees are entitled to maternity leave, increments and

allowances as admissible in respect of other regular employee of vacation Department of the State Government.

You are, therefore, requested to allow the ad hoc appointees to continue in service until regular appointments are made to the posts and their Service Books may be opened and leave of any kind of EL, maternity leave admissible as in the case of other regular employees sanctioned without prejudice to the claims of others, if any."

3.2. It is submitted by Sri Kunal Kumar Swain, learned Advocate for the petitioner that in conformity with said direction, the petitioner was extended the benefit with effect from 01.11.2014. Though the petitioner was initially appointed as Typist on *ad hoc* basis, after certain period on extensions, she was allowed to work as Junior Clerk-*cum*-Typist on *ad hoc* basis in the scale of pay of Rs.3,050/- — 75 — Rs.3,950/- — 80 — Rs.4,590/- till the post is filled up in regular manner by virtue of Office Order dated 06.04.1999. While working as such in the Office of District Mass Education, Cuttack, by virtue of subsequent Office Order dated 28.11.2013 issued by the District Education Officer, she was repositioned/adjusted in the Government Girls' High School, Kazibazar, Cuttack and, thereafter *vide* Office Order dated 17.06.2015, the petitioner was transferred to join in the Government Girls' High School, Badambadi, Cuttack to work as "JUNIOR CLERK". It is admitted case that since 01.11.2014 till May, 2015 the petitioner has been paid annual increments.

3.3. Therefore, it is urged by Sri Swain that though the petitioner has been discharging her duties against vacant sanctioned post as *ad hoc* employee since 1990, there is no rhyme and reason for the

opposite parties to cancel Last Pay Certificate and GIS (one time refundable).

Argument(s) advanced by the Standing Counsel for the School and Mass Education Department:

4. Sri Ramanath Acharya, learned Standing Counsel for the School and Mass Education Department forcefully opposing the contentions of Sri Kunal Kumar Swain, learned counsel for the petitioner, would urge that as per school records the cancellation of Last Pay Certificate and GIS is justified. By referring to the counter filed by the District Education Officer, Cuttack-opposite party No.3 he submitted that the petitioner being appointed as *ad hoc* employee, and such appointment is not against "sanctioned post", the very initial appointment was illegal.

4.1. Amplifying his submission further the learned Standing Counsel submitted that at paragraph 4 of the counter it is categorical stance of the opposite party No.3 is that the petitioner was appointed as "Junior Typist on *ad hoc* basis against the post of Junior Stenographer, but the order dated 06.04.1999 by the District Mass Education Officer, Cuttack shows that, she was appointed against the post of Junior Clerk-*cum*-Typist". Contradicting so, he submitted that as the petitioner has been working from dt.01.04.1999 on *ad hoc* basis, her service has not been regularized till date and she is not recognized as a regular Government servant, which disentitles her to get increment. Therefore, the cancellation of Last Pay Certificate and GIS as contained in Annexures-7 and 8 is beyond reproach and no infirmity can be imputed by the petitioner to such Office Orders.

4.2. Sri Acharya, learned Standing Counsel by referring to paragraphs 5 to 8 of counter filed by the opposite party No.3 put forth his argument that the petitioner misused "her official integrity very cleverly" and got periodical increments sanctioned in her favour. Misleading fact being submitted by the petitioner, the writ petition deserves to be dismissed.

Consideration of arguments of respective parties:

5. At the first blush the contention of learned Standing Counsel Sri Acharya is not acceptable in view of the fact that he candidly admitted during the course of argument that no disciplinary proceeding has been initiated, though in the counter doubtful integrity of the petitioner has been alleged. No material evidence has been adduced with regard to allegation of misuse of official capacity. Mere statement in counter filed by the opposite party No.3 would not be considered sufficient to discard the case of the petitioner. This Court does not approve of such a statement of responsible Officer like the District Education Officer without bringing on record any evidence to establish fact in the counter that the petitioner in her previous station committed irregularity and "cleverly used to sanction the periodical increments". Had that been so, the opposite party No.3-District Education Officer, Cuttack by issuing Office Order dated 28.11.2013 would not have repositioned/adjusted the petitioner against the post of Junior Clerk in the Office of the Headmistress, Government Girls' High School, Kazibazar, Cuttack, even as the record shows the petitioner has been appointed since 1990 to work as *ad hoc* employee.

5.1. On the contrary, the documents enclosed to the writ petition go to show that the petitioner has been appointed to function as *ad hoc* employee since 1990 and after reorganization of School and Mass Education *vide* Office Order dated 28.11.2013 (Annexure-4) it is clarified that the petitioner has been repositioned/adjusted against the post of "Junior Clerk" "after due approval of the Director, Secondary Education, Odisha, Bhubaneswar *vide* Order No.48543, dated 25.11.2013". Though Director, Secondary Education, Odisha is arrayed as the opposite party No.2 in the present case, he has not disputed or refuted such Order dated 25.11.2013 being issued and fact contained therein.

6. Perusal of documents enclosed to the present petition reveals that though the petitioner was appointed on *ad hoc* basis to work as Junior Typist against the vacant post of Junior Stenographer in 1990, it has been clearly reflected in Office Order dated 06.04.1999 (Annexure-3) that she was allowed to work as "Junior Clerk-*cum*-Typist" on *ad hoc* basis. Further Office Order dated 28.11.2013 reflected that the petitioner is "repositioned/adjusted against the post of Junior Clerk on his own scale of pay at the Office of the Headmistress, Government Girls' High School, Kazibazar, Cuttack" and in the Order dated 17.06.2015 issued from the Office of the Headmistress, Government Girls' High School, Kazibazar, Cuttack without any ambiguity it is found mentioned that "Smt. Sujata Das, Junior Clerk, Government Girls' High School, Kazibazar, Cuttack is hereby relieved of her duties". Therefore, the objection contained in the counter that her appointment was not against sanctioned

post appears to be jejune, more so, when the petitioner has been allowed to work as Junior Clerk after "due approval of the Director, Secondary Education, Odisha, Bhubaneswar *vide* Order No.48543, dated 25.11.2013".

7. The Government of Odisha in Education Department Letter No. XVIE-G-47/90/9214/E, dated 27.02.1992 accepted the position as enunciated by Hon'ble Supreme Court of India in the case of *Rattanlal and Others Vrs. State of Haryana, AIR 1987 SC 478 = (1985) 4 SCC 43*. In the said Letter, the Government of Odisha directed to extend the benefit of maternity leave, increments and allowances as admissible in respect of other regular employee of vacation Department of the State Government to the *ad hoc* appointees.

7.1. The Hon'ble Supreme Court of India in the said case *[Rattanlal, (supra)]* has been pleased to observe as follows:

> *"1. *** A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as*

casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary "hiring and firing" policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of "ad hocism" followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.,

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3. We strongly deprecate the policy of the State Government under which "ad hoc" teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These "ad hoc" teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules."

7.2. Though the position has been made clear with regard to *ad hoc* appointments way back in the year 1985 by the Hon'ble Supreme Court, the present case shows that the petitioner has been working since 1990 on *ad hoc* basis, first as Junior Typist, then Junior Clerk-*cum*-Typist, and ultimately Junior Clerk and continued as such since 2013 in the Office of Headmistress, Government Girls' High School, Kazibazar, Cuttack and later on

transferred in 2015 in the Office of Headmistress, Government Girls' High School, Badambadi, Cuttack.

7.3. This Court takes cognizance of the fact that the petitioner has averred in the writ petition that her case for regularization was pending before the Odisha Administrative Tribunal in O.A. No.1260 (C) of 2009 at the time of filing of the present case. It is, therefore, contended that in view of *Rattanlal (supra),* no illegality could be imputed in receiving increment and other benefits as admissible being *ad hoc* employee.

7.4. It has come to light that during pendency of the present petition, said O.A. No.1260 (C) of 2009 has come to be disposed of by this Court in the case of *Sujata Das Vrs. State of Odisha, WPC (OAC) No.1260 of 2009 vide Order dated 20.10.2022*. It is felt proper to extract said Order:

> *"2. Heard.*
>
> *3. The Petitioner has filed this Writ Petition seeking direction to opposite parties to regularize the services of the petitioner against the post of Junior Clerk-cum-Typist and to grant all service benefits as admissible to regular employee including annual increments, to fix her pay in the revised scale of pay, to release the leave salary and other benefits by opening her service book, within a stipulated time.*
>
> *4. In course of hearing, learned counsel for the Petitioner states that highlighting the grievances, the Petitioner has made a representation to Opposite Party No.2 vide Annexure-5 and the same may be directed to be considered within a stipulated time taking into consideration the judgment passed by this Court in Ranjeet Kumar Das Vs. State of Orissa and Others, (W.P.(C) No.20518 of 2010*

disposed of on 06.04.2018), to which learned Counsel for the State has no objection.

5. As agreed to by learned Counsel for the parties, this Court, without expressing any opinion on the merits of the case, disposes of the Writ Petition directing Opposite Party No.2 to consider the representation filed by the Petitioner vide Annexure-5, taking into consideration the judgment passed by this Court in Ranjeet Kumar Das (supra), and pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of this order."

7.5. It is noteworthy to extract the averment at paragraph 6.3 of the writ petition, which is not controverted in the counter except saying that the orders passed in O.A. No.1026 of 1996 and O.A. No.227 of 1999 are not made part of writ petition:

"That the applicant while continuing as such she filed Original Application bearing No.1026 of 1996 and that Original Application was disposed of by this Hon'ble Tribunal with a direction that the applicant's services shall not be terminated until a regularly selected candidate is appointed in accordance with the Rules. In the said order it has been further directed that the applicant shall be given an opportunity of competing with other candidates if any recruitment test is held to fill up the post. This Hon'ble Tribunal further observed that if the applicant is over aged by then, her upper age limit shall be relaxed. Subsequently the applicant filed another Original Applicant bearing No.227 of 1999 and in that case also this Hon'ble Tribunal directed that since there is no possibility of anybody being appointed in any of the post in the Organisation, the services of the applicant shall not be terminated until she is absorbed in any other office."

7.6. It is apt to take note of following observation made by Division Bench in the case of *Ranjeet Kumar Das Vrs. State of Odisha, W.P.(C) No. 20518 of 2010, vide Judgment dated 06.04.2018* [referred to and followed in the case of present petitioner in

Sujata Das Vrs. State of Odisha, WPC (OAC) No.1260 of 2009 vide Order dated 20.10.2022]:

> *"16. As it appears from the record itself, the case of the petitioner is covered under the exception carved out in paragraph 53 of Umadevi (3) [State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1], which is applicable to the present case. Meaning thereby, against an existing vacancy the petitioner having been engaged by following due procedure of selection and continued for a quite long period and, as admitted by Mr. R.K. Mohapatra, learned Government Advocate appearing for the State opposite parties and as is evident from the pleadings in the counter affidavit, the petitioner is still continuing, the same cannot be treated as an "illegal" appointment rather it may be nomenclature as an "irregular" appointment."*

7.7. Analysing the Office Order dated 08.08.1990 (Annexure-1) and subsequent Office Orders extending the *ad hoc* appointment of the petitioner in the post of Typist against the post of Stenographer, the Office Order dated 06.04.1999 (Annexure-3) which specifically mentioned about appointment of the petitioner on *ad hoc* basis in the post of Junior Clerk-*cum*-Typist and reposition/adjustment of the petitioner in the post of Junior Clerk after reorganization of School and Mass Education Department and Office Order dated 17.06.2015 (Annexure-6) whereby the petitioner, Junior Clerk, was transferred to the Office of Headmistress of Government Girls' High School, Badambadi, Cuttack (Annexure-6), transpires that the petitioner has been discharging her duties against vacant post being appointed on *ad hoc* basis. Therefore, this Court, it seems, disposed of the Writ Petition directing the Director of School and Mass Education to consider the representation filed by the petitioner, taking into

consideration the Judgment delivered in *Ranjeet Kumar Das (supra)*.

7.8. Reliance placed by the opposite parties on *State of Odisha Vrs. Mamata Mohanty, (2011) 3 SCC 436* is misplaced as the matter proceeded to decide whether a teacher appointed without requisite qualification is entitled to the benefit of grant-in-aid. The Hon'ble Supreme Court held as follows at paragraph 69:

"In view of the above, it stands crystal clear that a teacher who had been appointed without possessing the requisite qualification at the initial stage cannot get the benefit of grant-in-aid scheme unless he acquires the additional qualification and, therefore, question of grant of the UGC pay scale would not arise in any circumstance unless such teacher acquires the additional qualification making him eligible for the benefit of grant-in-aid scheme. The cumulative effect therefore comes to that such teacher will not be entitled to claim the UGC pay scale unless he acquires the higher qualification, i.e., MPhil/Phd."

7.9. Thus, the stand of the District Education Officer-opposite party No.3 in the counter that since the petitioner's "*ad hoc* service period has not been regularized the benefits which she prayed for allowing the increment, GIS, *etc*. are not entitled" cannot withstand judicial scrutiny.

8. The impugned Office Orders being Annexures-7 and 8 does not disclose that any reason being assigned by the Headmistress, Government Girls' High School, Kazibazar, Cuttack and the Headmistress of Government Girls' High School, Badambadi, Cuttack nor does it show any notice for show cause being issued to the petitioner. Unilateral action of the opposite parties without communication of reason for cancellation of Last Pay Certificate

and GIS would tantamount to flagrant violation of principles of natural justice.

8.1. In *Shrawan Kumar Jha and Others Vrs. State of Bihar and Others, AIR 1991 SC 309 = 1991 Supp. (1) SCC 330* where the appointments of the teachers being cancelled on the ground that District Superintendent of Education had no authority to make appointments, the Supreme Court held as follows:

> *"*** In the facts and circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground."*

8.2. In administrative law the principle of *audi alteram partem* has been held to be a fundamental principle of the rules of natural justice. This requires the maker of a decision to give prior notice of the proposed decision to the persons affected and an opportunity to make a representation. The exercise of power which affects the rights of an individual must be exercised in a manner which is fair and just and not arbitrary or capricious. An administrative order involving civil consequences must necessarily be made in conformity with rules of natural justice. Any decision which has been made without compliance of the aforementioned fundamental principle of natural justice, *i.e.*, the rule of *audi alteram partem*, cannot be sustained. For the aforesaid proposition of law reference may be made to the decisions in *Mahipal Singh Tomar Vrs. State of Uttar Pradesh*

and Others, (2013) 16 SCC 771; Ridge Vrs. Baldwin, (1963) 2 All ER 66 (HL); Chief Constable of North Wales Plice Vrs. Evans, (1982) All ER 141 (HL); State of Orissa Vrs. Binapani Dei, AIR 1967 SC 1269; U.P. Warehousing Corporation Vrs. Vijay Narayan Vajpayee, (1980) 3 SCC 459.

8.3. In *Maneka Gandhi Vrs. Union of India, AIR 1978 SC 597 = (1978) 1 SCC 248,* has established beyond doubt that even in an administrative proceeding involving civil consequences doctrine of natural justice must be held to be applicable.

8.4. Natural justice is another name for common sense justice. Rules of natural justice are not codified canons, but they are principles ingrained into the conscience of men. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrowed and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law.

8.5. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person *in absentia* becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. In *Basudeo Tiwary Vrs. Sido Kanhu University and Others, (1998) 8 SCC 194*, it has been 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 Article 14 of the Constitution of India.

8.6. In *Union of India Vrs. Tulsiram Patel, AIR 1985 SC 1416*, the meaning of '*audi alteram partem'* in its wider amplitude has been explained by the Supreme Court of India in the following words:

> *"*** audi alterim partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. ***"*

8.7. This is one of the most important principles of natural justice. It is after all an approved rule of fair-play. The 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 or *quasi* judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. In *VFPL ASIPL JV Company and Another Vrs. Union of India and Others, 2020 SCC OnLine Ori 729,* this Court observed as follows:

> *"The soul of natural justice is 'fair play in action'. 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. Vrs. 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. Vrs. Secy. Of State for Home Affairs, exp. Hosenball, Geoffrey Lane, LJ, 1977 3 All ER 452 (DC & CA), preferred the homely phrase 'common fairness' in defining natural justice."*

8.8. In *K.I. Shephard Vrs. Union of India, (1987) 4 SCC 431*, the Hon'ble Supreme Court held that fair-play in action is a facet of natural justice. The principles of natural justice are also applicable to administrative actions. Even in emergent situations, compliance with at least minimum requirement of rules of natural justice is a condition precedent to take any action which has adverse civil consequences, and post decisional hearing is not sufficient in such cases.

8.9. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied

from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

8.10. In *Jayendra Vishnu Thakur Vrs. State of Maharashtra and Another, (2009) 7 SCC 104*, in paragraph 57, it has been laid down as follows:

> *"57. Mr. Naphade would submit that the appellant did not suffer any prejudice. We do not agree. Infringement of such a valuable right itself causes prejudice. In S.L. Kapoor Vrs. Jagmohan, (1980) 4 SCC 379, this Court clearly held: (SCC p.395, para 24)*
>
> > *'24. ***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."*

8.11. In *H.L. Trehan Vrs. Union of India, (1989) 1 SCC 764*, the Apex Court held that there can be no deprivation or curtailment of any

existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14. It is further held that the post-decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. The authority, who embarks upon a post-decisional hearing, will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. Even if any hearing was given to the employees that would not be in compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. See also *V.C. Banaras Hindu University Vrs. Shrikant, (2006) 11 SCC 42.*

8.12. In *Swadeshi Cotton Mills Vrs. Union of India, AIR 1981 SC 818*, the Hon'ble Apex Court observed as follows:

"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 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."

8.13. In *Kranti Associates Private Limited and Another Vrs. Masood Ahmed Khan and Others, (2010) 9 SCC 496*, wherein, the Hon'ble Supreme Court considering a catena of decisions, observed as follows:

> *"12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262.*
>
> *13. In Keshav Mills Co. Ltd. Vrs. Union of India, (1973) 1 SCC 380, this Court approvingly referred to the opinion of Lord Denning in R. Vrs. Gaming Board for Great Britain, ex p Benaim, (1970) 2 QB 417 and quoted him as saying "that heresy was scotched in Ridge Vrs. Baldwin, 1974 AC 40".*
>
> *14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).*
>
> *15. This Court always opined that the face of an order passed by a quasi judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".*

8.14. In *Kranti Associates Pvt. Ltd. (supra)*, after considering various judgments, the Court formulated certain principles in paragraph 51 of the Judgment, which are set out herein below:

> *"a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *b. A quasi judicial authority must record reasons in support of its conclusions.*
>
> *c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power.*
>
> *e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
>
> *f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi judicial and even by administrative bodies.*
>
> *g. Reasons facilitate the process of judicial review by superior Courts.*
>
> *h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*
>
> *i. Judicial or even quasi judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have*

been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya Vrs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'Due Process'."

8.15. Said proposition of law has been reiterated in *Oryx Fisheries Pvt. Ltd. Vrs. Union of India and Others, (2010) 13 SCC 427.*

8.16. It is well-settled that reasons are the link between the order and the mind of the authority who passes the order. Proper reasons, even in administrative order, are the necessary concomitant for a valid order passed by the administrative authority or its instrumentality. The purpose of indicating such reasons in the administrative order is to be conveyed to the affected parties by the authority arrived at the conclusion with it, so that the aggrieved person will have the opportunity of testing the correctness of the said order before the appropriate forum.

8.17. The Supreme Court in *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vrs. Shukla & Brothers, (2010) 4 SCC 785* held that the principles of natural justice has twin ingredients;

firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and

secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind.

Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order

must be supported by the reasons of rationality. The distinction between passing of an order by an administrative authority and a *quasi* judicial authority has practically extinguished and both are required to pass reasoned orders.

8.18. The *Wharton's Law Lexicon* says, reason is the very life of law, when the reason of a law once ceases, the law itself generally ceases. Referring to the said depiction, the Supreme Court in paragraph 24 in *Shukla & Brothers (supra),* observed as under:

> *"24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and gives entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever precise they may be."*

8.19. The Supreme Court in *Siemens Engineering and Manufacturing Co. of India Ltd. Vrs. Union of India and Another*, *(1976) 2 SCC 981*, highlighting the importance of reasons, *albeit* in the context of arbitral award, but also emphasizing on need of giving reasons by the administrative authorities, in paragraph 6 of the Judgment held as under:

> *"6. *** If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that*

*administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ***"*

8.20. The Supreme Court in *Gurdial Singh Fijji Vrs. State of Punjab, (1979) 2 SCC 368*, while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession was essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection. In this context, in paragraph 18 of the judgment, the Apex Court held as under:

"The Supreme Court in State of Orissa Vrs. Dhaniram Luhar, (2004) 5 SCC 568, while dealing with the cardinality of recording of reasons, referred to its earlier decision in Raj Kishore Jha Vrs. State of Bihar and Ors. (2003) 11 SCC 519, wherein, highlighting the necessity of giving reasons, the Supreme Court held that 'reason is the heartbeat of every conclusion, and without the same it becomes lifeless'."

8.21. Even in respect of administrative orders, *Lord Denning, M.R. in Breen Vrs. Amalgamated Engineering Union, (1971) 1 All E.R.*

1148, observed that 'the giving of reasons is one of the fundamentals of good administration'.

8.22. In *State of Orissa Vrs. Dhaniram Luhar, (2004) 5 SCC 568* it was observed that:

> *"7. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See Raj Kishore Jha Vrs. State of Bihar, (2003) 11 SCC 519 = 2004 SCC (Cri) 212.]*
>
> *8. Even in respect of administrative orders, Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 2 QB 175 = (1971) 2 WLR 742 = (1971) 1 All ER 1148 (CA) observed (All ER p. 1154h):*
>
> *'The giving of reasons is one of the fundamentals of good administration.'*
>
> *In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree, 1974 ICR 120 (NIRC) it was observed:*
>
> *'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.'*
>
> *Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The*

'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi judicial performance."

8.23. Aforesaid enunciation has also been reflected in *Steel Authority of India Ltd. Vrs. Sales Tax Officer, (2008) 9 SCC 407.*

8.24. This Court in the case of *Famous Security Services Vrs. State of Odisha and Others, D.B. Writ Petition (Civil) No.19689 of 2020, vide Judgment dated 13th October, 2020* observed as follows:

"24. The order impugned in Annexure-12 dated 04.08.2020 does not show any reason for cancellation of contract and agreement. Franz Schubert said- "Reason is nothing but analysis of belief." In Black's Law Dictionary, reason has been defined as a- "faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions."

It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe. Therefore, reasons being a necessary concomitant to passing an order allowing the authority to discharge its duty in a meaningful manner either furnishing the same expressly or by necessary reference.

25. "Nihil quod est contra rationem est licitum" means as follows:

"nothing is permitted which is contrary to reason. It is the life of the law. Law is nothing but experience developed by reason and applied continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone can make the laws obligatory and lasting."

Therefore, recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is pertinent to note that a decision is apt to be better if the reasons for it are set out in writing because the reasons are then more likely to have been properly thought out. It is vital for the purpose of showing a person that he is receiving justice.

In Re: Racal Communications Ltd. (1980)2 All ER 634 (HL), it has been held that the giving of reasons facilitates the detection of errors of law by the court.

In Padfield Vrs. Minister of Agriculture, Fisheries and Food (1968) 1 All E.R. 694, it has been held that a failure to give reasons may permit the Court to infer that the decision was reached by the reasons of an error in law.

26. *In Union of India Vrs. Mohan Lal Capoor, AIR 1974 SC 87 it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.*

Similar view has also been taken in Uma Charan Vrs. State of Madhya Pradesh, AIR 1981 SC 1915.

27. *In Travancore Rayons Ltd. Vrs. The Union of India, AIR 1971 SC 862 it is observed by the apex Court that the necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court would require to be satisfied that the decision has been reached after due consideration of the*

merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

8.25. It is also settled proposition of law that non-application of mind is one of the facets of arbitrariness. Reference in this connection may be made to *East Coast Railway and Anr. Vrs. Mahadev Appa Rao & Ors., (2010) 7 SCC 678*, wherein the Supreme Court observed that non-application of mind as well as not giving proper reasons should be held to be arbitrary. The Court in paragraphs 23 and 24 of the Judgment held as under:

"23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.

24. In the instant case, the order passed by the competent authority does not state any reasons whatsoever for the cancellation of the typing test. It is nobody's case that any such reasons were set out even in any contemporaneous record or file. In the absence of reasons in support of the

order it is difficult to assume that the authority had properly applied its mind before passing the order cancelling the test."

8.26. There is no precise statutory or other definition of the term "arbitrary". *Black's Law Dictionary* describes the term "arbitrary" in the following words:

'1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures, or law.

2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. This type of decision is often termed arbitrary and capricious.'

8.27. The *Corpus Juris Secundum*, explains the term "arbitrary" in the following words:

'ARBITRARY— Based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; capricious; exercised according to one's own will or caprice and therefore conveying a notion of a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non-rational, or not done or acting according to reason or judgment; not based upon actuality but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in power, despotic, or tyrannical; harsh and unforbearing. When applied to acts, 'arbitrary' has been held to connote a disregard of evidence or of the proper weight thereof; to express an idea opposed to administrative, executive, judicial, or legislative discretion; and to imply at least an element of bad faith, and has been compared with 'willful'.'

8.28. The Supreme Court in *Shrilekha Vidyarthi Vrs. State of U.P., (1991) 1 SCC 212*, observed that the true import of the expression 'arbitrariness' is more easily visualized than precisely stated or defined and that whether or not an act is arbitrary would

be determined on the facts and circumstances of a given case. The observations of the Supreme Court are apt to be quoted:

> *"36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."*

8.29. In *Mahabir Auto Stores Vrs. Indian Oil Corporation, AIR 1990 SC 1031 = (1990) 3 SCC 752* the apex Court took the view that the decision of the State/public authority can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution on any of the grounds available in public law field. It was pointed out that if a governmental action even in the matters of entering and not entering into contracts fails to satisfy the tests of reasonableness, the same would be unreasonable and liable to be quashed by a writ Court for violation of Article 14 of the Constitution. In paragraph 12 of the Judgment, the Apex Court held as follows:

*"*** It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."*

8.30. In *S.N. Mukherjee Vrs. Union of India, (1990)4 SCC 549*, the Apex Court held that the requirement to record reasons can be regarded as one of the principles of natural justice, which governs exercise of power by administrative authorities.

8.31. Considering the case of the instant petitioner from the above perspective, it transpires that the cancellation of Last Pay Certificate *vide* Annexure-7 and GIS *vide* Annexure-8 are not supported by any reason nor do they depict any application of mind. There is no record to show that prior to taking any action detrimental to the petitioner leading to civil consequence, no opportunity of hearing was afforded much less notice inviting explanation was issued. Therefore, the impugned Office Orders are not sustainable being bereft of reason and worded cryptic. It is, thus, appropriate to exercise the power conferred under Article 226 of the Constitution of India by setting aside Office Orders, whereby cancellation of Last Pay Certificate and GIS are made mechanically.

9. At paragraph 5 of the counter, the opposite party No.3-District Education Officer, Cuttack has sought to cover up the lacuna in

the impugned Office Orders by supplementing reasons. In said paragraph, he has asserted as follows:

"That the applicant while working as Junior Clerk in the Government Girls' High School, Kazibazar, Cuttack by missing (sic. misusing) of her official integrity very cleverly used to sanction the periodical increments which is a gross fault. So far as the Conduct Rule is concerned, the applicant knows it very well that her ad hoc period of services has not been regularised by the Departmental Authority, but very cleverly she used to miss lead (sic. mislead) her Authority and successfully achieved the same with a wrong manner which is not legal. So far as the Conduct Rule is concerned and action deemed proper may be taken."

9.1. Such a scurrilous allegation has been levelled against the petitioner hinting at her character without laying any factual foundation. No evidence does form part of the counter to suggest that the petitioner-Sujata Das had ever misused her official capacity. At this juncture, the learned Standing Counsel on being asked candidly admitted that as yet no proceeding has been drawn up against the petitioner. On earlier occasion of hearing, *i.e.,* 03.02.2023 this Court passed the following Order:

"Mr. R.N. Acharya, learned Standing Counsel for the School and Mass Education as a last chance prayed for placing the materials to substantiate the averments taken in para-5 and 6 of the counter filed on behalf of the Opposite Part No. 3 (District Education Officer, Cuttack)."

9.2. During the course of final hearing on 17th February, 2023, Sri Ramanath Acharya, learned Standing Counsel could not place any material to justify the statement of the District Education Officer that the petitioner had ever misused her official capacity to mislead the authorities. This Court points out that had this

been true, the petitioner would not have been given extensions and allowed to work as *ad hoc* employee, as Junior Typist, Junior Clerk-*cum*-Typist and Junior Clerk (continuing till date). This Court further would wish to notice that the petitioner was transferred to work as Junior Clerk from Government Girls' High School, Kazibazar, Cuttack to Government Girls' High School, Badambadi, Cuttack. To reiterate the District Education Officer, Cuttack *vide* Office Order No.19676, dated 28th November, 2013 (Annexure-4) has clearly accepted the position that "after due approval of the Director, Secondary Education, Odisha, Bhubaneswar, *vide* Order No.48543, dt.25.11.2013" the petitioner, who was then working as "Junior Clerk in the Office of District Mass Education, Cuttack" has been repositioned/adjusted against "the post of Junior Clerk" "at the Office of the Headmistress, Government Girls' High School, Kazibazar, Cuttack". Therefore, the attempt of the District Education Officer-opposite party No.3 concerned to improve the case of the opposite parties by adding superfluous reason to Office Order *vide* Memo dated 24.07.2015 (Annexure-7) and Office Order dated 07.07.2015 (Annexure-8) is not found acceptable and thereby this Court disapproves the trial made by him to camouflage record to build up case in favour of the Department.

9.3. The objection in the counter to the extent that the Departmental Authority has not regularized the services does not stand to reason for this Court *vide* Order dated 20.10.2022 in *Sujata Das Vrs. State of Odisha, WPC (OAC) No.1260 of 2009* directed the

Director of School and Mass Education to consider the case of the petitioner and "pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of this order". The learned Standing Counsel has not put forth any instruction before this Court with regard to result of compliance of said direction.

9.4. Legal position is very clearly established that non-existent reason at the time of passing Order cannot sanctify such order subsequently by way of filing counter-affidavit. The Supreme Court in *S.N. Chandrashekar and Anr. Vrs State of Karnataka and Ors., (2006) 3 SCC 208*, relying on its earlier decision in *Bangalore Development Authority Vrs. R. Hanumaiah, (2005) 12 SCC 508*, held that the order passed by the statutory authority, it is trite, must be judged on the basis of the contents thereof and not as explained in affidavit.

9.5. In paragraphs 7 and 8 of *Shree Ganesh Construction Vrs. State of Odisha, 2016 (II) OLR 237,* this Court has been pleased to observe as under:

> *"7. In the counter affidavit filed, the reasons have been assigned, which are not available in the impugned order of cancellation filed before this Court in Annexure-4 dated 5.2.2016. More so, while cancelling the tender, the principles of natural justice have not been complied with. It is well-settled principle of law laid down by the Apex Court in Mohinder Singh Gill and Another Vrs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851 that:*
>
> *'When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh*

reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.'

8. In Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, AIR 1952 SC 16, the Apex Court held as follows :

'Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."

9.6. The reasons are required to be read as they were recorded by the Authority. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Authority to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Authority to reach to the conclusion. It is for the Authority to form opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Authority. The reasons recorded should be self-explanatory and should not keep the petitioner guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Authority, in the event of challenge to the reasons,

must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the petitioner fully and truly, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary decision making process of the Authority. The reasons recorded by the Authority cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

Conclusion:

10. Judged in the aforesaid background, cancellation of Last Pay Certificate issued *vide* Letter No.91, dated 25.05.2015 as communicated by Headmistress of Government Girls' High School, Kazibazar, Cuttack, in Memo No.107, dated 24th July, 2015 (Annexure-7) and Office Order No.116, dated 7th July, 2015 (Annexure-8) cancelling one time refundable amount of Rs.7,500/- (which was sanctioned by Office Order No.75, dated 18.05.2015) communicated by Headmistress of Government Girls' High School, Badambadi, Cuttack (Annexure-8) cannot be maintained and is indefensible.

10.1. Accordingly, the writ application is allowed, and the impugned Office Orders in Annexures-7 and 8 are quashed.

10.2. It is, however, made clear that if the opposite parties-authorities are so inclined, they can proceed strictly in accordance with law and following the fair procedure indicated in this judgment.

10.3. The parties are left to bear their own costs.

(MURAHARI SRI RAMAN)
JUDGE



Orissa High Court
The 1st of March, 2023
Aks/MRS/Laxmikant