

K.Athimoolam Vs. the Director of Collegiate

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Court : Chennai

Decided On : Jun-15-2012

Judge : D.Hariparanthaman, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : W.P.(MD).No.527 of 2010 and M.P.(MD)No.1 of 2010

Appellant : K.Athimoolam

Respondent : The Director of Collegiate

Advocate for Def. : Mr.S.Kumar, A.G.P, Adv.

Advocate for Pet/Ap. : Mr.M.Ramadhas, Adv.

Judgement :

PRAYER

Writ Petition is filed under Article 226 of the [Constitution of India](#) praying to issue a Writ of certiorarified Mandamus, to call for the records relating to the impugned order dated 08.01.2010 passed by the 2nd respondent in his proceedings vide Na.Ka.No.9375/D4/2009 and quash the same as illegal and consequently reinstate the petitioner with all the monetary benefits.

ORDER

1. The petitioner is a Post Graduate in Commerce. He also passed Senior Grade in English Typewriting and Junior Grade in Tamil Typewriting.
2. The second respondent issued an advertisement in 'The Hindu' newspaper on 29.10.2009, calling for applications for the post of Typist in Pasumpon Muthuramalinga Thevar Memorial College at Kamudhi. The qualification required for the said post is that the candidate should have passed S.S.L.C. and also passed Senior Grade in Tamil Typewriting and Junior Grade in English Typewriting or Senior Grade in Tamil Typewriting and Junior Grade in English typewriting. The petitioner applied for the said post. The second respondent sent a letter dated 18.12.2009, directing the petitioner to attend interview on 04.01.2011 with required certificates. Accordingly, he attended the interview on 04.01.2010. About 100 candidates participated in the interview. While so, the second respondent issued an order dated 04.01.2010 stating that the petitioner was selected for the post of Typist in General Turn. Thereafter, the second respondent issued appointment order dated 05.01.2010, appointing the petitioner as Typist and directing him to join duty. Accordingly, he joined duty on 06.01.2010. While so, all of a sudden, the impugned order dated 08.01.2010 was passed without any notice, terminating the service of the petitioner. Hence, the petitioner has filed the present writ petition, seeking to quash the order dated 08.01.2010 of the second respondent.
3. The respondents have filed counter affidavit.
4. Heard both sides.
5. The impugned order dated 08.01.2010 states that the following qualification has been prescribed for the post of Typist. 1.jkpH; kw;Wk; MA;fpy jl;lr; rpy; Kje piy (Higher Grade in Tamil and English)
6. According to the impugned order, if no person is available with the qualification mentioned in Clause 1, person in Clause 2 would be chosen and if no person is available with the qualification prescribed in Clause 2, the person available with the qualification in clause 3 would be preferred. It is stated that even though many persons were available with the qualification prescribed in Clause 1, the petitioner

was erroneously selected and hence, the selection was set aside by the impugned order.

7. The counter affidavit filed by the respondents also has proceeded on the same lines. As per the counter affidavit, there are candidates available with Senior Grade in Tamil and English Typewriting. But, the petitioner was chosen for appointment, though he was having only Higher Grade Typewriting in English and Junior Grade Typewriting in Tamil.

8. The impugned order goes contrary to the advertisement, calling for applications to fill the post of typist. In the advertisement calling for application, the qualification prescribed for the post is as follows:

9. Nowhere the advertisement states that persons with Senior Grade in Typewriting in English and Tamil is the preferred qualification. No preference for persons with Higher Grade in both English and Tamil Typewriting is mentioned in the advertisement. Now, the respondents could not state in the impugned order that many candidates with Senior Grade in English and Tamil Typewriting were available and therefore, the selection was bad.

10. Furthermore, as rightly contended by the counsel for the petitioner, the impugned order is opposed to the decisions of the Apex Court in *Shrawan Kumar Jha V. State of Bihar* reported in AIR 1991 Supreme Court 309 and another decision in *Basudeo Tiwary Vs. Sido Kanhu University and Others* reported in JT 1998(6) SC 464. The impugned order was passed without notice. Therefore, the action of the second respondent in passing the impugned order is highly arbitrary and violative of Article 14 of the [Constitution of India](#). Para 8,9 and 13 of the said judgment in *Basudeo Tiwary Vs. Sido Kanhu University and Others* reported in JT 1998(6) SC 464 are extracted herein:

8. Several contentions have been addressed by learned counsel on either side. However, for the purpose of disposal of this appeal, it is suffice to consider only one aspect of the matter and that is, whether the appellant had been given an opportunity of being heard before terminating his services and in the absence of the same whether such termination is valid. The High Court took the view that the

appointment of the appellant made by the Syndicate of the University by its resolution dated 24.1.86 is illegal and on that basis took the view that the termination of the services was in order but did not examine the aspect with which we are concerned in the present case as to the non-observance of rule of Audi Alteram Partem.

9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation V. D.T.C. Mazdoor Congress reported in JT 1990(3) SC 725.

13. Admittedly in this case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.

11. In AIR 1991 SC 309 (Shrawan Kumar Jha V. State of Bihar), the teachers appointed by the District Superintendents of Schools were cancelled by Government on the ground that he had no authority. The cancellation was made without notice to teachers. The order of cancellation was set aside by the Apex Court. The relevant passage in para 3 of the said judgment is extracted herein: It is not necessary to go into all these questions. 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, 1998 on this

short ground.

12. For all the above reasons, the impugned order is liable to be set aside. Accordingly, the writ petition is allowed and the impugned order dated 08.01.2010 passed by the 2nd respondent in Na.Ka.No.9375/D4/2009 is quashed. No costs. Consequently, connected miscellaneous petition is closed.

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