

Varanasi through the Chief Judicial Magistrate, Varanasi by the Registrar (Compliance).

**(2024) 10 ILRA 327**

## ORIGINAL JURISDICTION

## CIVIL SIDE

**DATED: LUCKNOW 17.10.2024**

## BEFORE

**THE HON'BLE ALOK MATHUR, J.**

Writ-A No. 3827 of 2023

**Wasi Ahmad** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**

Brijesh Kumar

### Counsel for the Respondents:

C.S.C.

**A. Service Law – UP Government Servants (Discipline & Appeal) Rules, 1999 – Rule 7 – GO dated 19.07.2022 & 16.08.2022 – Enquiry proceeding was kept pending for five years – Chargesheet issuing authority and punishing authority is the same person – Effect – Principle of Natural justice and Principle of Bias – ‘One cannot be judge in his own case – Applicability – Held, failure to observe the principle that no person should adjudicate a dispute which he/she has dealt with in any capacity, creates an apprehension of bias – Entire disciplinary proceedings as well as the appeal has been decided contrary to the settled cannons of settled principles of natural justice and was clearly hit by the principles of bias . (Para 11 and 13)**

**B. Maxim '*nemo debet esse iudex in propria causa*' – Meaning – No one can be a Judge in his own cause. (Para 10)**

**Writ petition allowed. (E-1)**

**List of Cases cited:**

1. A.K. Kraipak & ors.. Vs U.O.I.: AIR 1970 SC 150

2. U.O.I.Vs Naseem Siddiqui; 2004 SCC OnLine MP 678

3. Rattan Lal Sharma Vs Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & ors.; (1993) 4 SCC 10

4. A. U. Kureshi Vs High Court of Guj.; (2009)  
11 SCC 84

5. Ashok Kumar Yadav Vs St. of Har.; (1985) 4 SCC 417

6. Mohd. Yunus Khan Vs St. of U.P.; (2010) 10 SCC 539

(Delivered by Hon'ble Alok Mathur, J.)

1...Heard Sri Brijesh Kumar, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. A challenge has been made to the appellate order dated 14.12.2022 passed by the opposite party no. 2- Sri Ajay Kumar Shukla in his capacity as Secretary Election Anubhag, Lucknow Uttar Pradesh rejecting the appeal of the petitioner.

3. It has been contended by counsel for the petitioner that while serving on the post of Senior Assistant in the Office of District Relation Officer/District Magistrate, Amethi departmental proceedings were initiated against the petitioner and he was placed under suspension on 01.09.2017. The Sub Divisional Officer, Gauriganj, District Amethi was appointed as Enquiry Officer. The said Enquiry Officer was, in the meanwhile, transferred and on 11.6.2018, the Deputy District Election Officer, Gauriganj was appointed as the Enquiry Officer. The Deputy District Election Officer, Gauriganj also could not conclude

the enquiry proceedings and he was replaced by the then Sub Divisional Officer, Gauriganj. A charge sheet was submitted on 29.6.2018 and the same was handed over to the petitioner on 24.7.2018. According to the petitioner, the charge-sheet did not contain any documents as mentioned therein and, accordingly, he had requested the respondents to supply all the documents, which were necessary in support of the charges levelled in the charge sheet.

4. The petitioner had replied to the charge sheet on 13.3.2020 denying the allegations levelled against him and the Enquiry Officer concluded enquiry on 1.12.2020 and submitted it to the Chief Election Officer, Lucknow. The petitioner was given a show cause notice containing a copy of the enquiry report on 5.1.2021. In his reply, the petitioner has stated that entire enquiry proceedings were conducted dehors the provisions of the U.P. Government Servants (Discipline & Appeal) Rules, 1999 (hereinafter referred to as the "Rules 1999"), inasmuch as provisions of Rule 7 were also not followed. The disciplinary authority rejected the reply of the petitioner and passed an order for reduction in rank to the lowest pay of his original post of Junior Assistant and imposed recovery of Rs. 6,59,487/- from his salary as penalty. Apart from the above, the difference in the salary was also forfeited pertaining to the period, the petitioner was kept under suspension during the disciplinary proceedings.

5. Being aggrieved by the order of punishment dated 24.6.2022, the petitioner preferred an appeal on 15.9.2022 under Rule 11 of the Rule 1999. In his appeal, he had submitted that enquiry was conducted in gross violation of provisions contained

in Rule 7 and in contravention of the Government Orders dated 19.7.2022 and 16.8.2022 and the petitioner was illegally continued under suspension for five years and only 50% of the salary was paid to him during the said proceedings. The petitioner being aggrieved by the order of the punishment, had preferred an appeal, which has been rejected by means of impugned order dated 14.12.2022.

6. The main contention raised by the petitioner with regard to the fact that:-

(a) Sri Ajay Kumar Shukla is the authority who had issued the charge sheet dated 5.1.2021 in his capacity as Chief Election Officer.

(b) The punishment order dated 24.6.2022 was also imposed by Sri Ajay Kumar Shukla in his capacity as Chief Election Officer, Election Department, Government of Uttar Pradesh.

(c) Lastly, Sri Ajay Kumar Shukla in his capacity as Secretary of Election Department, Government of Uttar Pradesh has rejected the appeal of the petitioner on 14.12.2022.

7. Counsel for the petitioner submitted that all canons of principles of natural justice have been violated in the conduct of enquiry against the petitioner apart from the fact that the respondents have acted malafide in keeping the enquiry proceedings pending for five years and the person, who had issued the charge sheet is the same persons, who proceeded to impose the punishment and rejected the appeal against the order of punishment. He submits that the respondents have totally ignored the provisions of principles of bias where it is clearly stated that a person

cannot be a judge of his own cause and the said provisions has been adequately detailed by the Hon'ble Supreme Court in the case of **A.K. Kraipak and others Vs. Union of India: AIR 1970 SUPREME COURT 150** . In view of above, he has submitted that entire disciplinary proceedings are vitiated and, accordingly, are liable to be set aside.

8. Learned Standing Counsel has opposed the writ petition but could not dispute the aforesaid fact specially that Sri Ajay Kumar Shukla is the same authority, who had issued the charge sheet, passed the punishment order and also decided the appeal against the order of punishment.

9. In **Union of India, Through Its Secretary, Ministry of Railway . Naseem Siddiqui, 2004 SCC OnLine MP 678**, the Court held that one of the fundamental principles of natural justice is that no man shall be a Judge in his own cause and this principle in turn consists of seven well-recognized facets, one of them being 'the adjudicator shall be impartial and free from bias' and 'if any one of these fundamental rules is breached, the inquiry will be vitiated'. It was also held that a domestic inquiry must be held by an unbiased person so that he can be impartial and objective in deciding the subject matter of the inquiry and should have an open mind till the inquiry is completed. IO should neither act with bias nor give an impression of bias.

10. In **Rattan Lal Sharma Vs. managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors, (1993) 4 SCC 10** , the Supreme Court held that no one can be a Judge in his own cause, which is a common law principle derived from the Latin maxim '*nemo debet esse judex in propria causa*'. In **A. U.**

**Kureshi v. High Court of Gujarat, (2009) 11 SCC 84**, the Supreme Court referring to the said principle held that failure to adhere to this principle creates an apprehension of bias on the part of the Judge and referred to the observations of Justice **P.N. Bhagwati in Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417**, as follows:?

*One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias 'it is in accordance with natural justice and common sense that the judge likely to be so biased should be incapacitated from sitting'. The basic principle underlying this rule is that justice must not only be done but must also appear to be done."*

11. It was further held that failure to observe the principle that no person should adjudicate a dispute which he/she has dealt with in any capacity, creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case in which he is interested and the question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision. In **Mohd. Yunus Khan v. State of Uttar Pradesh (2010) 10 SCC 539**, the Supreme Court observed that existence of an element of bias renders the entire disciplinary proceedings void and reiterated that apprehension of bias operates as a disqualification for a person

to act as an adjudicator. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings else the entire proceeding will be rendered null and void. I may quote an observation of the Supreme Court, as follows:?

*"Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law".*

12. In this context, it would be relevant to refer to a few passages from the judgment of the Supreme Court in **Rattan Lal Sharma** (*supra*), as follows:?

*"9. In Administrative Law, rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures. On the question whether the principles of natural justice are also applicable to the administrative bodies, formerly, the law courts in England and India had taken a different view. It was held in Franklin v. Minister of Town and Country Planning [[1947] 2 All ER 289 (HL)] that the duty imposed on the minister was merely administrative and not being judicial or quasi-judicial, the principle of natural justice as applicable to the judicial or quasi-judicial authorities was not applicable and the only question which was required to be considered was whether the Minister had complied with the direction or not. Such view was also taken by the Indian courts and reference may be made to the decision of this Court in Kishan Chand Arora v. Commissioner of Police, Calcutta [(1961) 3 SCR 135 : AIR 1961 SC 705]. It was held that the compulsion of hearing*

*before passing the order implied in the maxim 'audi alteram partem' applied only to judicial or quasi-judicial proceedings. Later on, the law courts in England and also in India including this Court have specifically held that the principle of natural justice is applicable also in administrative proceedings. In Breen v. Amalgamated Engineering Union [[1971] 1 All ER 1148 (CA)] Lord Denning emphasised that statutory body is required to act fairly in functions whether administrative or judicial or quasi-judicial. Lord Morris observed (as noted by this Court in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248, 285 : (1978) 2 SCR 621] decision) that:*

*"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed."*

13. In the light of the above, this Court is of the considered view that entire disciplinary proceedings as well as the appeal has been decided contrary to the settled cannons of settled principles of natural justice and was clearly hit by the principles of bias and entire disciplinary proceedings against the petitioner stands vitiated and are, accordingly, quashed.

14. Needless to say, it will be open for the respondents to conduct a fresh enquiry in accordance with law but considering the fact that a Senior Officer of the State Government had proceeded□ to

act in such an illegal and arbitrary manner where he had himself issued a charge sheet□ as well as the punishment order and apart from the above proceeded to decide the appeal again his own order has acted contrary to the canons of principle of natural justice and the conduct of such Senior Officer of the State Government□ is deprecated, as he is required to be well versed in the basic legal provisions pertaining to adherence to the principles of natural justice.

15. In all the three stages the requirement of law is that Inquiry Officer has to be different person then the Disciplinary Authority and Appellate Authority has to be superior authority who looks into the correctness of the order passed by the Disciplinary Authority.

16. It is well known that the errors if any in the inquiry are to be looked into by the Disciplinary Authority and the errors if any in the disciplinary proceedings are to be looked into by the Appellate Authority.

17. To give a fair hearing under reasonable opportunity, each of the three authorities have to be different individuals inasmuch as, no person can be adjudged in his own cause.

18. Sri Ajay Kumar Shukla, have acted himself in all the three capacities in the present case as lead to miscarriage of justice and accordingly the entire disciplinary proceedings stand vitiated. The entire exercise will have to be carried out afresh in accordance with law.

19. Needless to say that such miscarriage of justice results in huge loss to the State exchequer where huge

time and energy will be spent by the senior officials in conduct of the said inquiry proceedings. Therefore, we expect that the persons conducting disciplinary proceedings are supposed to be well versed with the relevant rules and law applicable and only thereafter they should be permitted to conduct disciplinary proceedings.

20. In this regard the State Government should ensure that the persons who are entrusted with the task of conducting disciplinary proceedings have adequate knowledge in this regard.

21. The Senior Registrar of this Court is directed to send a copy of this order to the Chief Secretary, Government of U.P., Lucknow for necessary orders and compliance.

22. It is the matter of serious concern considering the manner in which Sri Ajay Kumar Shukla has acted in the present case.□ Accordingly, this Court is of the view that the paper pertaining to the present case be placed before the Chief Secretary for initiating suitable proceedings against the said officer and making him accountable for his conduct as is evident from the manner in which single handedly he has acted as the Enquiry Officer, Disciplinary Authority and the Appellate Authority.

23. Let the necessary order be passed by him within a period of six weeks and communicated to this Court through the Senior Registrar.

24. With the aforesaid directions, **the writ petition is allowed with the cost of Rs. 25,000/- to be paid by the State Government.**

25. It is also directed that the enquiry may be concluded against the petitioner within a period of three months from the date a certified copy of this order is produced before the competent authority.

**(2024) 10 ILRA 332**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 01.10.2024**

## BEFORE

**THE HON'BLE ROHIT RANJAN AGARWAL, J.**

Writ-A No. 12611 of 2024  
Alongwith  
Writ-A No. 11436 of 2024

**Rajiv Kumar** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**  
Vinod Kumar Singh

**Counsel for the Respondents:**  
C.S.C., Sankalp Kumar, Sharad Chandra

**A. Service Law – UP Education Service Section Commission Act, 2023 – Establishment of an unified Commission – Object – Idea for setting up a unified commission was due to the difference in the level of efficiency related to selection by the above named Commission/Institution, as the quality of selection of teachers was affected, there was no uniformity in the process of selection, timely selection of teachers was not being done, and there were several vacant posts of teachers in various institutions, which adversely affected the education/training of the students/trainees in the St.. (Para 6)**

**B. Service Law – UP Education Service  
Section Commission Act, 2023 – Section  
31 – Repeal and Saving clause – UP  
Secondary Education Service Selection  
Board Act, 1982 – C/M had already sent**

**the requisition to the Board in the year 2019 – Sub-section (2) of Section 31, which is a non obstante clause, saves all those action taken and proceedings initiated under Act of 1982, and it shall be deemed to have been done or taken under the Act of 2023. The saving clause of Section 31 clearly saves all the action which were done pursuant to the Act of 1982 – Additional Director did not have the power to proceed with the single transfer taking benefit of the proviso to sub-rule (5) of Rule 28. (Para 18, 19 and 23)**

**Writ allowed. (E-1)**

**List of Cases cited:**

1. Prashant Kumar Katiyar Vs St. of U.P. & ors.; 2013(1)ADJ 523 (FB)
2. Hari Pal Singh Vs St. of U.P. & ors.; 2016 (8) ADJ 622
3. Writ A No. 5106 of 2023; Mayashankar Vs St. of U.P. & ors., decided on 13.08.2024

(Delivered by Hon'ble Rohit Ranjan  
Agarwal, J.)

1. The question which needs adjudication by this Court, raised through these two petitions are as to “Whether once the requisition has been sent by the Committee of Management to the U.P. Secondary Education Service Selection Board (*hereinafter referred to as “the Board”*) in terms of sub-rule (4) of Rule 11 of U.P. Secondary Education Services Selection Board Rules, 1998 (*hereinafter called as “Rules of 1998”*) the post of Principal in an intermediate institution can be filled by way of transfer or the senior most teacher officiating as a Principal is to continue till a duly selected candidate is sent by the Board.”

2. Further, upon the enactment of Uttar Pradesh Education Service Section