

**Chief Justice's Court**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 506 of 2024

**Appellant :-** Distt. Basic Education Officer and Another

**Respondent :-** Smt. Punita Singh and 3 others

**Counsel for Appellant :-** Shailendra Singh Rajawat

**Counsel for Respondent :-** Pradeep Singh Somvanshi

**Hon'ble Arun Bhansali,Chief Justice**

**Hon'ble Jaspreet Singh,J.**

**(Per: Arun Bhansali, CJ)**

**Civil Misc. Condonation of Delay Application:**

1. Heard learned counsel for the parties on application seeking condonation of delay in filing the appeal.
2. For the reasons indicated in the application supported by affidavit, the same is allowed.
3. Delay in filing the appeal is condoned.

**Appeal:**

1. At the request of learned counsel for the parties, they have been finally heard.
2. This special appeal is directed against order dated 16.04.2024, passed in Writ – A No. 17503 of 2017 by the learned Single Judge, whereby the writ petition filed by the respondent challenging order dated 15.07.2017, whereby her services have been terminated w.e.f. 07.08.2010, has been set aside.
3. The writ petition was filed by the respondent with the submissions that she was initially appointed as Assistant Teacher on 07.08.2010 and continued in service thereafter. The order impugned dated 15.07.2017 was passed indicating that she had procured appointment on the basis of forged documents.

4. Plea was raised that a bare reading of the order impugned, makes it apparent that the same was completely arbitrary, without application of mind and merely on the basis of report submitted by various authorities. Though a show cause notice was issued, which was replied by the respondent, the same was rejected as not being worthy of taking cognizance. It was submitted that the order has been passed dehors the service rules pertaining to termination of services of the teacher.

5. The plea raised, was contested by the respondents with the submissions that alternative remedy was available to the petitioner by way of appeal under Rule 5 of The U.P. Basic Education Staff Rules, 1973 (hereinafter referred to as 'the Rules of 1973'). The respondent was afforded an opportunity of hearing prior to passing of the order impugned, which has been passed on the basis of report submitted by Sampurnanand Sanskrit University, Varanasi, wherein it is clearly found that the respondent had procured employment on the basis of forged documents.

6. The learned Single Judge came to the conclusion that entire proceedings have been conducted and concluded without even adverting to the submissions made by the respondent in pursuance to the show cause notice. No reasons have been indicated for rejecting the reply and that provisions of Rule 7 of the Rules of 1973 with regard to imposition of major penalty have not been followed at all. Referring to the judgment in the cases of **Roop Singh Negi Vs. Punjab National Bank and others : (2009) 1 SCC (L & S) 398** and **Station of U.P. Vs. Saroj Kumar Sinha : (2010) 2 SCC 772**, learned Single Judge came to the conclusion that the order was unsustainable and quashed the order dated 15.07.2017 giving liberty to the appellants to pass fresh order strictly in accordance with Rule 7 of the Rules of 1973 and adhering to the principles of natural justice. It was further directed that the respondent shall be reinstated in service and shall be paid regular salary for the post. It was also clarified that backwages and other benefits shall be subject to the final outcome of the disciplinary proceedings. Feeling aggrieved, the present appeal has been filed by the State.

7. Learned counsel for the appellants made vehement submissions that learned Single Judge failed to appreciate that appointment has been procured by the

respondent by committing fraud by submitting forged documents and as such, she was not entitled for any relief as the appointment was null and void from the very inception. It was emphasized that when the fact of procurement of appointment, based on forged documents came to the notice, show cause notice was issued to the respondent and after affording due opportunity of hearing and obtaining her reply and verification report, on satisfaction that the documents produced by her were forged, her services were rightly terminated. It was also emphasized that the report sent by the University clearly indicates in respect of the mark-sheet/certificate of Purva Madhyama, Uttar Madhyama and Shashtri, that the details were found forged and the verification report, which was submitted earlier was also forged and therefore, termination was justified.

8. It is also submitted that when show cause notice was issued to her and she was afforded the opportunity to submit her explanation vide letters dated 23.05.2017 and 30.07.2017, she appeared before the authority and informed that she has applied for a second copy of the mark-sheets/certificates and after receiving the same, the same would be submitted, however, it was rightly found that once the original mark-sheets and certificates were already on record, there was no occasion of submitting any second copy of the same. It was also submitted that no document worth the name along with the writ petition and/or in the present appeal has been produced seeking to sustain the appointment of the respondent.

9. It was submitted that the ground pertaining to violation of Rule 7 of the Rules of 1973 and Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the Rules of 1999') has no substance in the peculiar circumstances of the case and therefore, the order impugned deserves to be set aside. Reliance was placed on **Union of India and another Vs. Raghuwar Pal Singh : AIR 2018 SC 1411, State of U.P. and others Vs. Durvijay Singh : 2015 (7) ADJ 416, Reena Devi Vs. State of U.P. and others : AIR Online 2019 All 1999, Shiv Kumar Mishra Vs. State of U.P. and others : Writ – A No. 13121 of 2023, Amarendra Kumar Vs. State of U.P. and others : Writ – A No. 16519 of 2006 and Rita Mishra and others Vs. Director, Primary Education, Bihar : AIR 1988 PATNA 26.**

10. Learned counsel for the respondent supported the order impugned. Submissions have been made that the order impugned, passed by the learned Single Judge, does not call for any interference as the same is in consonance with the settled legal position, wherein services of the Government servant cannot be terminated without resorting to the regular inquiry under the service rules, which in the present case are the Rules of 1973 and the Rules of 1999. Admittedly, no charge-sheet was issued and no inquiry for major penalty was held against the respondent and therefore, for non compliance of the statutory provisions, the order impugned is bad in law and has rightly been quashed by learned Single Judge, which does not call for any interference. Reliance has been placed on Division Bench judgment in **Smt. Parmi Maurya Vs. State of U.P. and others : Special Appeal Defective No. 110 of 2014** and **Abhiram Vs. State of U.P. and others : Writ – A No. 8657 of 2020, decided on 02.11.2020.**

11. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

12. A bare perusal of the order impugned dated 15.07.2017 passed by the appellants would reveal that a complaint was made against the respondent that she has obtained appointment based on forged eligibility/qualification documents. The respondent was issued notice dated 05.12.2015 and a letter was sent to the Sampurnanand Sanskrit University, Varanasi for verification of the mark-sheets of the respondent. A reminder was sent to the University, however, no response was received. In the meanwhile, the respondent approached the Court by filing writ petition No. 12620 (S/S) of 2016 seeking early disposal of the notice dated 05.11.2015, wherein the Court required the respondents to take a decision on the notice dated 05.12.2015.

13. A communication dated 28.01.2016 was received from the Sampurnanand Sanskrit University, Varanasi, purportedly from its Deputy Registrar (Examination) verifying the educational qualification of the respondent, which though was addressed to District Basic Education Officer, Amethi, however, was sent to Block Education Officer, Tiloi and as the circumstances were doubtful, again along with

the said verification report dated 28.01.2016, the Block Education Officer was sent to the University, wherein on 30.03.2017, the University informed that no communication dated 28.01.2016 verifying the educational qualification was sent by the University.

14. It is then noticed in the order that on 24.04.2017, the Deputy Registrar (Examination) of the University was sent the mark-sheets produced by the respondent pertaining to her Purva Madhyama, Uttar Madhyama and Shashtri, which response dated 17.05.2017 was received, *inter alia*, indicating that the enrolment number indicated in the three qualifications were not allotted as per the record, whereafter the respondent was again afforded an opportunity of hearing by communication dated 23.05.2017 for 30.05.2017 when she appeared and filed a written response, *inter alia*, indicating that she has applied to the University for duplicate copy of the mark-sheets and has deposited the fees. On receiving the same, evidence would be produced. The order indicated that Block Education Officer, Bhetua was personally sent to the University, wherein the details of the examination of Purva Madhyama, Uttar Madhyama and Shiksha Shashtri were found concocted and that by getting a forged verification the department was sought to be misguided. Despite providing her sufficient opportunity, *inter alia*, no facts have been produced nor any documents has been produced. The authority also indicated that once the original documents are available, there was no necessity to apply for duplicate copies and once inquiry has been held from the purported institution holding the examination, no further inquiry was required and consequently, came to the conclusion that the appointment being void was put to an end.

15. From the above determination made by the authority, it is apparent that the respondent was provided opportunity to prove that the documents produced by her pertaining to her qualification were not forged/concocted, however, except for indicating that she has applied for duplicate copy of the documents, she did not produce any material to support her qualification. The determination made by the authority that once the original documents as produced by the respondent were

already available with the department, there was no logic in seeking production of the duplicate copies of the mark-sheets, cannot be faulted.

16. From the above determination, it is apparent that the University has categorically indicated that the documents relied on by the respondent for seeking employment were totally forged and fabricated. Neither before the learned Single Judge nor before this Court any attempt has been made to negate the finding recorded about the eligibility/qualification documents being forged and fabricated.

17. The learned Single Judge allowed the writ petition only on the ground that termination of employment amounts to imposing major penalty and the same could not have been imposed without holding inquiry under Rules of 1973/Rules of 1999.

18. A Division Bench of this Court in **Zila Basic Shiksha Adhikari, Balrampur Vs. Anand Kumar Tripathi and others : 2024:AHC-LKO:37313-DB**, in a case where compassionate appointment accorded to the respondent therein, was terminated on account of failure to produce relevant documents as regard his parentage, etc., the Division Bench, on the question whether in such case show cause notice should be issued and thereafter order of cancellation of appointment should be passed or a full fledged inquiry in terms of Rules of 1999 should be held followed by removal or dismissal, came to the conclusion that disciplinary proceedings are ordinarily initiated if any misconduct has been committed after joining service, therefore, if the initial appointment itself was fraudulent, then referring to the judgment of Hon'ble Supreme Court in **R. Vishwanatha Pillai Vs. State of Kerala and others : (2004) 2 SCC 105**, and Patna High Court judgements in **Ishwar Dayual Sah Vs. State of Bihar : 1987 Lab IC390** and **Rita Mishra Vs. Director, Primary Education : 1988 Lab IC 907**, came to the following conclusion:

*“12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording*

*an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in the aforesaid decision of the Supreme Court.*

*13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed.”*

19. Recently, Hon’ble Supreme Court in **Union of India Vs. Prohlad Guha etc.:** **2024 SCC OnLine SC 1865**, in a case where the writ petitions filed by the employees were allowed for not following the Railway Servants (Discipline & Appeal) Rules, 1968 and on coming to the conclusion that qua a person in regular service, the dismissal cannot take place sans any disciplinary inquiry, while setting aside the judgement, came to the following conclusion:

*“13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers observed -*

*“20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. ...From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be*

*untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.*

*.....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a Section on existence or non-existence of which power can be exercised.*

*13.1. The words of Denning L.J. in Lazarus Estates Ltd. v. Beasley are of importance qua the impact of fraud. He wrote -*

*“.....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgment, contract and all transactions whatsoever...”*

*13.2. 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; Derry v. Peek; Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education]*

*13.3 In R. Vishwanatha Pillai v. State of Kerala, a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.*

*14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (supra) answers the question. The Respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in Devendra Kumar v. State of Uttaranchal. In paragraph 25 thereof it was observed -*

*“25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to*



*urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056].) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur).”*

*(Emphasis supplied)*

15. *The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the Respondent-employees' Original Applications is restored. The Respondent-employees were rightly dismissed from service by the Appellant-employer. .... ”*

20. From the above, it is well established that in case, the employment has been obtained based on fraudulent documents, the beneficiary of such fraud cannot seek that procedure prescribed under the Rules of 1999 must be followed.

21. So far as the judgment in the case of **Smt. Parmi Maurya (supra)** relied on by counsel for the respondent is concerned, it was a case where the Division Bench came to the conclusion that petitioner therein, was not afforded adequate opportunity of hearing. However, in the present case, it is ex facie clear from the order impugned that she was provided adequate opportunity with regard to her documents being forged and fabricated and the only plea raised by her was that she would produce duplicate copies of the said documents and neither in the writ petition nor in the present appeal, she has been able to produce any further document/material to substantiate that the mark-sheets issued to her, were not forged and fabricated.

22. In view of above discussion, the appeal is allowed. The order impugned passed by learned Single Judge in Writ – A No. 17503 of 2017, dated 16.04.2024 is quashed and set aside. The writ petition filed by the respondent stands dismissed.

**Order Date :- 15.10.2024.**

Mukesh Pal

(Jaspreet Singh, J) (Arun Bhansali, CJ)