

**Court No. - 52****Case :-** WRIT - A No. - 10716 of 2021**Petitioner :-** Nevtej Kumar Singh**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Santosh Kr. Singh Paliwal, Sr. Advocate**Counsel for Respondent :-** C.S.C., Sanjay Chaturvedi, Sanjay Kumar Singh**Hon'ble Mrs. Manju Rani Chauhan, J.**

1. By means of present writ petition, the petitioner has challenged an order dated 31.07.2021 passed by third respondent<sup>1</sup>, whereby services of the petitioner, who is an Assistant Teacher, have been terminated on the ground that he is alleged to have obtained appointment on the basis of forged certificate of freedom fighter's dependent. By the order impugned, he has also been directed to deposit the salary back, received by him, into the State Exchequer.

2. Facts of the case, in brief, are that the petitioner was appointed as an Assistant Teacher in Junior Basic School, Yadav Basti Chibbi, Block Chilkahar, Ballia, under the category of dependents of freedom fighter<sup>2</sup>. He joined his services on 22.10.2020 and since then he has been working on the aforesaid post. During verification of documents, it revealed that dependent certificate of freedom fighters dated 04.04.2008 as provided by the petitioner is not available at Sl. No. 1114 in the relevant records of District Magistrate, Ballia – fourth respondent, whereas name of one Harmeet Singh is mentioned at Sl. No. 1114. Thereafter, the third respondent issued a show cause notice to the petitioner on 24.03.2021. The petitioner approached the office of fourth respondent, whereupon he was issued another certificate on 01.04.2021. The petitioner appeared

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1 District Basic Education Officer, Ballia.

2 DFF

before the third respondent and submitted his reply on 06.04.2021 and placed all relevant documents along with the certificate issued on 01.04.2021. The third respondent issued another show cause notice to the petitioner on 01.07.2021 asking about the issuance of two certificates for the dependent of freedom fighter issued on 04.04.2008 and 01.04.2021. Pursuant thereto, the petitioner submitted a detailed reply on 24.07.2021, appending all the relevant records including documents of his late grandfather showing that he was a freedom fighter. The third respondent by the order impugned terminated the petitioner's services on the ground that the certificate dated 04.04.2008 appears to be forged. Said order is under challenge in the present writ petition.

3. Learned counsel for the petitioner submits that the petitioner is the dependent of freedom fighter late Shubh Narain Singh. His date of birth is 15.07.1991. He was issued a certificate of dependent of freedom fighter, bearing no. 1114 dated 04.04.2008 by the fourth respondent, when he was about sixteen and half years old. An advertisement was issued on 18.01.2021 inviting applications for the posts of Assistant Teachers. The petitioner, being the dependent of freedom fighter, applied under the said category. He appended the certificate issued by the fourth respondent on 04.04.2008 along with his application form.

4. It is further submitted by learned counsel for the petitioner that being eligible for the post of Assistant Teacher, the petitioner was selected as an Assistant Teacher and was posted at Junior Basic School, Yadav Basti, Chibbi, Block Chilkahar, District Ballia. He joined his services at the said institution on 22.10.2020. Learned counsel for the petitioner next submits that the petitioner was discharging his duties with sincerity and utmost dedication and there was no complaint whatsoever against him.

5. During verification, all documents submitted by the petitioner were found genuine, however, with respect to the certificate for dependent of a

freedom fighter, of the petitioner, it was informed by the fourth respondent that at Sl. No. 1114, against which the petitioner is said to have been issued said certificate, name of one Harmeet Singh is mentioned. Learned counsel for the petitioner contended that the fourth respondent did not raise any suspicion over the validity of petitioner's certificate. The petitioner being a bonafide person, on issuance of show cause notice by the third respondent dated 24.03.2021, moved again before the fourth respondent for issuance of certificate of dependent of freedom fighter to him, whereupon the certificate dated 01.04.2021 was issued categorically reiterating the fact as was noted in previously issued certificate dated 04.04.2008, that the petitioner belongs to the category of dependents of freedom fighter. Thus, there is no dispute regarding the truthfulness of the fact that the petitioner falls under DFF category, however, the entire issue which has resulted in the present proceedings, is only account of the some clerical error on the part office of fourth respondent though it was not under the supervision of applicant or his guardians to have verified the serial number or dispatch number while issuing certificate dated 04.04.2008. The genuineness of the fact is proven again by the concerned authority on issuance of certificate dated 01.04.2021 that the petitioner genuinely falls under the relevant category of DFF against which his appointment as Assistant Teacher is made.

6. Learned counsel for the petitioner has further contended that there is no suppression, concealment or misrepresentation at petitioner's end. The mistake or error, if any, might have been a clerical one, which does not even alter the genuineness of petitioner's eligibility under DFF category. In support of his submissions, he has relied upon a judgement of Lucknow Bench of this Court passed in the case of **Neeraj Kumar v. State of U.P. and others**<sup>3</sup>.

7. Learned counsels for the respondents submit that the petitioner obtained his appointment by playing fraud as he enclosed a forged

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3 Service Single No. 5312 of 2021, Dated: 25.11.2019

certificate of freedom fighter, as is evident from the verification report obtained from the office of fourth respondent, which says that name of one Harmeet Singh is mentioned at Sl. No. 1114. Before passing the order impugned, the petitioner was afforded due opportunity of hearing, however, instead of proving his DFF certificate dated 04.04.2008 to be genuine, he placed another certificate dated 01.04.2021. It has further been contended that petitioner's services were terminated because he submitted a certificate which was not endorsed in the relevant records of fourth respondent at Sl. No. 1114.

8. It has further been contended that the petitioner has committed fraud as he obtained his appointment on the basis of a forged certificate and it is a well settled law that fraud vitiates even the solemn proceedings in any civilized system of jurisprudence. Learned counsel for the respondents have relied upon the judgements of Apex Court in the case of **The State of Bihar and others v. Devendra Sharma**<sup>4</sup>; **Satish Chandra Yadav v. Union of India & Ors.**<sup>5</sup>, and a judgement of this Court passed in the case of **Saurabh Srivastava v. State of U.P. and others**<sup>6</sup>.

9. I have heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Santosh Kumar Singh Paliwal, learned counsel for the petitioner, Sri Ashish Kumar Nagvanshi, learned Additional Chief Standing Counsel for the State and Sri Sanjay Kumar Singh, learned counsel appearing for respondent no. 3.

10. The facts of the case and arguments advanced by learned counsel for the parties, germinate sole question for consideration, that would conclude the controversy concisely in precision. The question is - 'whether the petitioner obtained State employment fraudulently or the State functionaries committed an unintentional error in issuance of Certificate for Dependent of Freedom Fighter to the petitioner.

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4 2019 0 Supreme (SC) 1158

5 2022 0 Supreme (SC) 982

6 Neutral Citation No. - 2024:AHC:177954 : Writ-A No. 17117 of 2024

11. Indisputably, the petitioner belongs to DFF category. Said fact is not questioned even by the respondent authorities at any stage. Here, the question arises, has the petitioner played any fraud or forgery in obtaining the certificate in question. Barely, the answer would be in affirmative, if he would have been beneficiary by the suppression of information on the basis of which the certificate is issued, **and**, the answer is in negative if no inadmissible favour is awarded on the basis of said certificate.

12. In the present case, the certificate of DFF was issued to the petitioner on 04.04.2008, when he was about sixteen and a half years old. He earned academics and being eligible for the post of Assistant Teacher, applied pursuant to the advertisement issued on 18.01.2021, at the age of 31 years, appending the aforementioned certificate. During verification, said certificate was not found to have been endorsed at the given serial number i.e. 1114. The petitioner subsequently obtained another certificate of DFF on 01.04.2021. Thereafter, the impugned termination order has been passed alleging discrepancies in said two certificates, without alluding to any incorrect or deceitful information regarding DFF category, on the basis of which the certificates were issued.

13. Arguments advanced by learned counsel for the respondents that the petitioner obtained appointment on the basis of a forged certificate do not corroborate the premise, on which the impugned order stands for. Impugned termination order does not refer any fraudulent exercise or submission of a forged document on the part of petitioner.

14. The judgement referred to hereinabove by the learned counsel for the respondents in **Devendra Sharma (supra)** holds the law about the irregular appointments obtained by way of backdoor entries, act of nepotism, favouritism and illegal appointments got on the basis of forged documents. Pertinently, there is no allegation of forgery or suppression

against the petitioner in the present case, thus, the said judgement does not nourish the arguments of learned counsel for the respondents.

15. Insofar as the judgement cited by learned counsel for respondents in **Satish Chandra Yadav (supra)**, is concerned, it is about the public employment obtained by an employee on the basis of false declaration and suppression of relevant and concerned information. Here, in the instant case, no allegation of such nature is levelled against the petitioner. This judgement also does not support the respondents' version.

16. In the case referred by learned counsel for the respondents in **Saurabh Srivastava (supra)**, a Coordinate Bench of this Court has been pleased to deal in detail with the act of fraud by an incumbent, who obtained employment on the basis of fraudulent educational certificates. In the present case, the alleged certificate dated 04.04.2008 issued to the petitioner is not proven to have been obtained fraudulently as the concerned authority has again issued certificate of DFF to the petitioner on 01.04.2021, therefore, this judgement also does not hold the field, insofar as the facts of the case in hand are concerned.

17. Recently, the Delhi High Court in the case of **Ahire Ajinkya Shankar v. Indian Coast Guard and others**<sup>7</sup>, observing about the purpose of document verification and mismatch, which were found during verification, has held as under:

“13. We need not reiterate that the purpose of document verification is to ensure that there is no impersonation, misleading or incorrect documents furnished to seek enlistment. The aforesaid alleged mismatch cannot be, by any stretch of imagination, labeled as discrepancy or furnishing of any false information. Mere inadvertent mentioning or non-mentioning of surname in caste certificate issued by the Competent Authority would not mean and indicate that it is a case of impersonation or furnishing of false information. The details have been filled up as per the contents of the certificates available with the petitioner. Moreover, the alleged mismatch is not such an error which could have led to rejection of the candidature of the petitioner, particularly, in view of the fact that there is nothing which may even remotely indicate that these are forged or procured documents. The

caste certificate ought to have been read in conjunction with other documents. A holistic view of the matter would not suggest that the petitioner is not a bonafide candidate.”

**18.** In the case of **Md. Zamil Ahmed v. State of Bihar & others**<sup>8</sup>, wherein the appellant therein, was not found responsible for making any false declaration or suppression of any material fact for securing appointment, the Supreme Court has held that the State is not entitled to take advantage of their own mistake if they felt it to be so. Relevant part of the said judgement reads thus:

“**15.** ...In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. ...”

*(Emphasis supplied)*

**19.** The process of issuance of a certificate and its endorsement in the records is the duty of concerned office, and it cannot be expected to have been done by the applicant. It is a settled position of law that the certificate or appointment issued on the basis of documents available with the department, the employee had no role in manipulation or misrepresentation, thus, it cannot be treated as fraudulent.

**20.** In view of the settled position of law, as discussed in the preceding paragraphs, if an appointment or benefit is granted by the department due to its own mistake, and the beneficiary has not committed any misrepresentation, then punitive action cannot be taken unless malafide intent is proved.

**21.** It has also been settled that a candidate cannot be held guilty of fraud or forgery unless there is deliberate suppression or misrepresentation of facts by him in obtaining the certificate. If, a certificate is wrongly issued by the authority, and the candidate has not played any active role in its issuance, no fraudulent intent can be imputed.

**22.** In the present case, entitlement of the petitioner under the relevant category of DFF is not disputed, rather only the endorsement of certificate dated 04.04.2008 at a particular serial number, i.e., 1114, is being questioned, to which this Court finds that it was not under the domain of the petitioner nor the petitioner could have played any role to maintain the relevant record of the concerned office. No fraud, as alleged in the order impugned, appears to have been played by the applicant. Fraud must be proved by cogent evidence, mere irregularity in issuance of a document by authority does not automatically amount to fraud or forgery on part of the recipient.

**23.** In view of the above discussion, it is evident that the issuance of a certificate to the petitioner owing to an error or oversight on the part of the competent authority cannot be construed as forgery, particularly when the said authority has later issued a rectified certificate acknowledging the mistake. If the certificate was issued due to the fault, negligence, or administrative lapse of the issuing authority and there is no evidence of manipulation, falsification, or misrepresentation by the petitioner, it does not amount to forgery under law. No fault is found to have been proved on the part of the petitioner in obtaining the DFF certificate.

**24.** Having considered the facts and circumstances of the case and the settled position of law, this Court finds that the case is made out in favour of the petitioner and the order impugned is unsustainable. Thus, the order impugned dated 31.07.2021 is quashed and the respondent no. 2 – District Basic Education Officer, Ballia is directed to reinstate the



services of the petitioner allowing him to function on the post of Assistant Teacher, forthwith.

**25.** The writ petition stands allowed accordingly.

**26.** No order as to costs.

**Order Date :-05.08.2025**  
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