



2025:AHC:175597

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 48129 of 2017

AFR

Satyaveer Singh

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Niklank Kumar Jain, Siddharth Khare
Counsel for Respondent(s)	:	B.P.Singh, C.S.C., Ram Prasad Dubey

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Mr. Siddharth Khare, learned counsel for the petitioner, Mr. Ram Prasad Dubey, learned counsel for respondent, Basic Education Officer, and Mr. Shailendra Singh, learned counsel for State-respondents.

2. The instant petition has been filed for following relief:

"i. Issue a writ, order of direction in the nature of certiorari to quash the impugned order dated 16.09.2017 passed by respondent no. 2/B.S.A., District Badaun against the petitioner."

3. Brief facts of the case are that the petitioner was appointed as an Assistant Teacher in Junior High School, Dhimarpura, Block Samrer, District Badaun on 04.02.2011. On some complaint filed by respondent no. 3- Chandrabhan Singh, regarding appointment of the petitioner on the basis of false educational certificates the District Basic Education Officer, Badaun, vide order dated 23.09.2016, stopped salary of the petitioner until inquiry being conducted. Thereafter, by order dated 07.04.2017, respondent no. 2 issued order for release of the petitioner's salary.

4. A Civil Misc. Writ Petition No. 17802 of 2017 was filed by respondent no. 3 before this Hon'ble Court regarding appointment of the petitioner being sought on the basis of false educational certificate and this Court by

order dated 27.04.2017 by requiring respondent no. 2 therein to summon the original records and examine all the educational qualification certificates of the petitioner, and thereafter to get them verified from institutions concerned. A direction was also issued to take a final decision, in accordance with law by means of a reasoned speaking order after affording opportunity of hearing to the petitioner.

5. Notice was issued to the petitioner on 03.06.2017 to which a reply was submitted on 14.06.2017 along with all educational certificate mentioning therein that the complainant was enemical to him due to election dispute and therefore has made a false complaint against him.

6. The counsel for the petitioner contends that the petitioner had passed High School Examination in the year 1994 with roll number 057126, photocopy of the mark sheet as well as high school certificate is annexed as Annexure No. 6 to the instant petition, Intermediate examination in the year 1996 with roll number 029165, photocopy of the mark sheet as well as Intermediate certificate is annexed as Annexure No. 7 to the instant petition, B.Com Part- 3 examination in the year 2003 with roll number 093763 from Dr. Bhimrao Ambedkar University Agra, photocopy of duplicate statement of marks of B.Com Part-3 as well as certificate issued by Dr. Bhimrao Ambedkar University Agra is annexed as Annexure No. 8 to the instant petition B.Ed. Examination in the year 2005 with roll number 5176138 from Dr. Z.H. Degree College, Etah, photocopy of the B.Ed mark sheet is being annexed as Annexure No. 9 to the instant petition. The petitioner has also qualified Special B.T.C. Training 2007 in the year 2010, photocopy of the certificate of Special B.T.C. Training dated 03.11.2010 is also annexed as Annexure No. 10 to the instant petition.

7. Despite the aforesaid, the respondent no. 2 has proceeded to pass the order dated 16.09.2017 terminating the services of the petitioner while deciding the representation of respondent no. 3 in compliance of order of this Court, dated 27.04.2017, passed in writ petition no. 17802 of 2017. Learned counsel for the petitioner submits that the order impugned is arbitrary, illegal and is based on the complaint as made by respondent no. 3 under influence of political pressure.

8. On the basis of telephonic information given by the complainant to the District Basic Education Officer that the verification of the educational documents of B.Com and B.Ed as submitted by the petitioner were forged on account of which the District Basic education officer issued letter dated 06.09.2017 to the office of Registrar of Dr. Bhimrao Ambedkar University Agra and only on the basis of oral information as given by clerk Sunil Kumar Srivastava who after perusal of the records orally informed that no verification was done and letter dated 16.08.2017 was also not issued from his office. By order dated 16.09.2017 respondent no. 2, only on the aforesaid facts, terminated the services of the petitioner and ordered to recover the amount of salary from the petitioner which is illegal.

9. The order dated 16.09.2017 has been passed without going through the educational certificates of the petitioner, as produced along with reply, and without giving opportunity of hearing to the petitioner, therefore, the order is arbitrary and in violation of principles of natural justice. The respondent no. 2 has passed the order dated 16.09.2017 relying upon the complaint as made by respondent no. 3 who was enmical to him and has proceeded to terminate his services which is unjustified.

10. Learned counsel for the petitioner submits that the petitioner has not done any forgery nor filed any forged certificate and has placed the certificates along with the writ petition to prove the same. Therefore the order terminating his services is bad and unsustainable in the eyes of law. Placing reliance upon a judgement in the case of **Smt. Parmi Maurya Vs. State of U.P. and 2 Others** passed in **Special Appeal Defective No. - 110 of 2014** as decided on 31.01.2014 submits that the disciplinary inquiry/full fledged inquiry as required under law has not been conducted prior to passing of the order dated 16.09.2017 terminating his services.

11. The counsel for the petitioner further submits that by letter dated 16.08.2017, which finds mention in para no. 11 of the counter affidavit, speaks about verification of two degrees possessed by the petitioner. Hence no forgery has been conducted and the petitioner's services have been terminated on a nonexistent ground. The controversy pertaining to bachelor of education degree awarded by Dr. Bhimrao Ambedkar

University Agra during academic session 2004-2005 is subject matter of Special Leave Petition before Supreme Court in which interim orders have been granted, therefore, once the B.Ed degree of the petitioner has not been annulled till date it cannot be said that he has committed any forgery. On the aforesaid grounds the impugned order is liable to be quashed.

12. He has also submitted that on 12.10.2017 the matter was heard and the following order was passed:-

"Issue notice to the second and third respondent.

Four weeks' time is allowed to the respondents to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

Petitioner was appointed as Assistant Teacher at Junior High School, Dhimarpura, Block Samrer, District Badaun, on 4 February 2011. On a complaint made by the third respondent, the B.Com. degree of the petitioner was got verified from Dr. Bhimrao Ambedkar University, Agra, which was duly certified by the Registrar on 16 August 2017. Accordingly, the High School and Intermediate mark sheets were also duly certified by the Regional Officer of the Board, at Meerut, by communication dated 25 May 2017. Thereafter, the impugned order would record that the second respondent, District Basic Education Officer, District Badaun, on telephonic information of the third respondent i.e. complainant, personally visited the University and on the information of the clerk dealing with the record that the letter dated 6 September 2017 was not issued by the office, nor it has been signed by the Registrar, the impugned order has been passed. But the impugned order would not record as to whether any enquiry was made regarding the genuineness and validity of the certificates pertaining to the petitioner. The course adopted by the second respondent is a procedure unknown to Government office, therefore, it creates doubt about the reasoning in rejecting the

certificate of the petitioner merely on a statement of a clerk.

Learned counsel for the second respondent prays for and is granted two weeks' time to file counter affidavit. The second respondent shall file his personal affidavit on the date fixed, failing which, he shall appear in person along with record.

List on 02.11.2017.

Till the next date of listing, the effect and operation of the impugned order dated 16 September 2017 passed by the second respondent District Basic Education Officer, District Badaun, shall remain stayed."

13. He submits that since then the petitioner is working and is being paid salary. Therefore, the order impugned may be quashed and the petitioner may be allowed to continue to work as Assistant Teacher and his salary may be paid accordingly with all consequential benefits. Learned counsel for the petitioner submits that from the report as placed by the SIT it can utmost be said that some tampering is there in the records which can not be said to be any fraud or forgery on the part of the petitioner even otherwise no fraud has been done and certificates of the petitioner are genuine.

14. The written submissions were placed, on behalf of the petitioner, before this Court on 16.09.2017 in which following grounds have been taken:-

" 1. A perusal of the order impugned itself would reflect that opportunity of hearing was granted to the petitioner on 14.06.2017 alone whereas the documents relied upon by the respondent authorities to hold the petitioner guilty of filing forged educational certificates are after the date opportunity of hearing was granted to the petitioner, i.e., 06.09.2017 when the BSA, Badaun enquired about the certificates from the Vice Chancellor, Dr. B.R. Ambedkar University and the statement of Sri Sunil Kumar Srivastava, the Verification Clerk, mentioned that the verification report dated 16.08.2017 has not been issued from the office, aforesaid is reflected from the first paragraph of the second page of the order dated

16.09.2017 (page 40 to the writ petition) and averments made in para 12 of the Counter Affidavit.

2. Even for purposes of argument it is considered that despite the fact that the petitioner is a regular employee, a full fledged departmental inquiry is not required to be undertaken against the employee concerned if the material on the basis of which reliance is being placed to pass the order impugned has been furnished, whereas in the present case it is undisputed that the opportunity of hearing was granted on 14.06.2017 while reliance is placed upon the verification undertaken by the BSA, Badaun itself on 06.09.2017 from Dr. B. R. Ambedkar University and no notice in this regard was ever issued to the petitioner that reliance is being placed on the statement of Verification Clerk Sri Sunil Kumar Srivastava on the basis of which the order impugned is passed. Even endorsement of Sunil Kumar has been made on a verification report enclosed as Annexure-4 with the Counter Affidavit.

3. Attention is drawn to order dated 27.04.2017 passed by this Hon'ble Court in Writ Petition No. 17802 of 2017 (page 22 of the writ petition), a perusal of which would reflect that a specific direction was issued to complete the entire exercise within a period of 8 weeks from the date certified copy of this order is filed before him. In view of the aforesaid, since the notice was issued to the petitioner on 03.06.2017, at best, for purposes of argument it may be assumed that the certified copy of the order dated 27.04.2017 reached before the respondent authorities on 03.06.2017 even then the BSA, Badaun was duty bound to complete to the entire proceedings and pass final order, at best, not later than 03.08.2017, if the date is computed from 03.06.2017, the date when notice was issued.

Whereas the order impugned has been passed on 16.09.2017, i.e. after much delay from the time stipulated in the order dated 27.04.2017 passed by this Hon'ble Court in Writ Petition No. 17802 of 2017 which could not have been done without taking the liberty from the court for time extension. It is specifically stated that no time extension was taken by the authority concerned in Writ Petition No. 17802 of 2017 (the statement is being made after going through the order sheet of Writ-C No.

17802 of 2017, attention in this regard is drawn to a Full Bench Judgment in the case of Abhishek Prabhakar Awasthi Vs. New India Assurance Co. Ltd & Others, reported in 2014 (6) ADJ 641 as also Judgment passed in Writ-A No. 19199 of 2023 (Narsing Narain Singh vs. State Public Service Tribunal). True copies of Full Bench Judgment in the case of Abhishek Prabhakar Awasthi Vs. New India Assurance Co. Ltd & Others, reported in 2014 (6) ADJ 641 as also Judgment passed in Writ-A No. 19199 of 2023 (Narsing Narain Singh vs. State Public Service Tribunal) are annexed as Enclosure Nos. 1 & 2 respectively to this Written Argument.

4. Apart from the aforesaid, the petitioner being a confirmed employee a regular departmental proceedings ought to have been undertaken by the respondent authorities in case they felt that the documents filed by the petitioner are forged, whereas merely issuing a notice and passing the order impugned de hors the Rules could not have been done, attention in this regard is drawn to Judgment dated 16.04.2024 passed in SLP (C) No. 8788-8789 of 2023 (Sandeep Kumar Vs. G.B. Pant Institute); Judgment in Special Appeal Defective No. 110 of 2014 (Smt. Parmi Maurya Vs. State of UP and Others) & Judgment in the case of Riazul Hasan vs. State of UP and Others reported in (2024) 6 ALJ 542). True copies of Judgment dated 16.04.2024 passed in SLP (C) No. 8788-8789 of 2023 (Sandeep Kumar Vs. G.B. Pant Institute); Judgment in Special Appeal Defective No. 110 of 2014 (Smt. Parmi Maurya Vs. State of UP and Others) & Judgment in the case of Riazul Hasan vs. State of UP and Others reported in (2024) 6 ALJ 542) are annexed as Enclosure Nos. 3, 4 & 5 respectively to this Written Argument."

15. The counsel for the petitioner has further taken a ground that the cancellation of appointment by the order impugned without proper departmental inquiry is in violation of Article 311(2) of the Constitution of India.

16. Learned counsel for the petitioner, placing reliance upon the case of Smt. Parmi Maurya (Supra), submits that cancellation of appointment culminating to termination without proper inquiry as required under law is illegal.

17. Learned counsel for respondent opposed the aforesaid and submits that there is no illegality in the order impugned as the appointment letter was initially issued mentioning a condition that in case after verification it is found that any false statement has been made or forgery has been committed the appointment shall stand cancelled after proper inquiry. It has also been mentioned that the aforesaid appointment shall be subject to the orders passed by High Court from time to time.

18. On the complaint a proper inquiry was conducted in compliance of order passed by this Hon'ble Court, the notice dated 03.06.2017 was given to the petitioner which is clear from the reply as submitted by the petitioner on 14.06.2017 and has been placed on record by means of Annexure 5 of the writ petition.

19. Learned counsel for the respondents further submits that the petitioner has placed self attested copies of High school and Intermediate mark-sheets and certificate. He further placed B.Com degree bearing roll number 093763 issued from Dr. Bhimrao Ambedkar University Agra as passed from Adarsh Krishna Mahavidyalaya Shikohabad, Firozabad. He further placed on record the copy of B.Ed degree alleged to have been issued by Dr. Bhimrao Ambedkar University Agra bearing roll number 5176138 as passed from Dr. Z.H Degree College.

20. After receiving a complaint from respondent no. 3 a letter dated 18.04.2017 was issued to the vice chancellor Dr. Bhimrao Ambedkar University Agra inquiring about issuance of B.Com degree with roll number 093763 and B.Ed degree with roll number 5776138. The Block Education Officer, Ujhani District- Badaun was also directed to personally visit the university along with copy of the letter for necessary compliance and certification from the university and endorsement made to this effect in the aforesaid letter proves the same. A reminder letter dated 25.05.2017 was issued as no verification was received from the university. Pursuant to the directions dated 18.04.2017 and 25.05.2017 when no information was received from the university the Block Education Officer went to the university on 16.06.2017 where he was informed that due to investigation being going on by the SIT no verification with regard to B.Ed degrees of session 2004-2005 may be

done at the present. However, on availability of original records verification of the documents as required will be done.

21. A verification letter was issued on 25.05.2017 regarding B.Com degree of the petitioner. A letter dated 16.08.2017 has been placed with the counter affidavit as has been received from the university which mentions about the verification dated 25.05.2017 not being done by the university. In response to aforesaid the verification report dated 16.08.2017 was placed wherein it has been clearly mentioned that the B.Com degree of degree of Satya Veer Singh son of Chunni Lal having roll number 093763 of year 2001 has not been issued.

22. The respondent no. 2 issued letter dated 06.09.2017 regarding verification of report dated 25.05.2017 regarding the graduation mark-sheet with roll number 093763 of 2003 and B.Ed mark-sheet with roll number 5176138 of 2005 of Satya Veer Singh son of Chuuni Lal (Petitioner) as well as a report dated 16.08.2017 which has been received in his office. Further a request has been made by respondent no. 2 to get the reports verified as to whether they have been issued from his office or not.

23. From the information as given by the principal Adarsh Krishan Degree College Shikohabad District Firozabad by letter dated 10.08.2017 to the complainant also it is clear that the petitioner was not a student of the aforesaid college as in the year 2003 students from roll number 091526 to 091805 were enrolled in the said college whereas the petitioner has claimed to have roll number 093762. The perusal of the aforesaid letter dated 10.08.2017 shows that the aforesaid information has been provided through right to information act.

24. During the inquiry an affidavit was given by the petitioner on 07.04.2017 stating therein that in case his educational qualification is found to be forged his candidature may be cancelled. Paragraph no. 2 of the said affidavit, being relevant, is reproduced hereinafter:-

'यह कि मुझ सपथकर्ता का हाई स्कूल अनु०- 057126 सुभाष इन्टर कालिज नौगाँव, यू.पी. बोर्ड इलाहाबाद, इन्टर मीडिएट परीक्षा अनु०-29165 सुभाष

इन्टर कालिज नौगाँव. यू.पी. बोर्ड इलाहाबाद, वी. कॉम. अनु० 093763 ए० के० कालिज शिकोहाबाद, डा० वी. आर. अम्बेडकर विश्वविद्यालय आगरा बी. एड अनु०-5176138 डा० जेड.एच. डिग्री कालेज एटा बोर्ड डा० बी. आर. अम्बेडकर विश्वविद्यालय आगरा मेरे द्वारा समस्त कथन सत्य है यदि कोई कथन गलत पाया जाता है तो मैं उसके लिए स्वयं उत्तरदायी होऊंगा। जिसके लिए मैं न्यायालय आदि में नहीं जाऊंगा। "

25. Learned counsel for the respondent submits that both B.Com and B.Ed degrees were found to be forged hence the appointment sought on the basis of forged documents has been cancelled and the services of the petitioner have been terminated in accordance with law. He submits that special investigating team has also investigated about the genuineness of the degrees for the session 2004-2005 and has placed its report according to which the B.Com and B.Ed degrees of the petitioner were found to be forged.

26. The counsel for the respondent submits that any person who has sought appointment on the basis of forged or by playing fraud and during course of inquiry has submitted an affidavit in this regard cannot challenge the termination order on the ground that the proper inquiry has not been done as it is settled position of law that no opportunity of hearing or inquiry is required in such cases.

27. Learned counsel for the respondent submits that the interim order granted to the petitioner was also vacated on 02.11.2017 and the same is reproduced hereinafter:-

"Sri Chandan Agarwal has filed Stay vacation application along with counter affidavit and personal affidavit on behalf of the second respondent, wherein, it is stated that the State Government constituted Special Investigation Team (SIT) to investigate the genuineness of the B.Com and B.Ed. degrees for the session 2004-05 issued by the affiliated colleges of Dr. Bhim Rao Ambedkar University, Agra. SIT has submitted report, wherein, petitioner's degree of B.Com and B.Ed. has been found forged.

Learned counsel for the petitioner prays for and is granted two

weeks' time to file rejoinder affidavit.

List thereafter.

Interim order dated 12.10.2017 stands vacated."

28. Heard learned counsel for the parties and perused the record.

29. The law is well-settled on this issue, with numerous judicial pronouncements emphasizing the importance of integrity and honesty in public appointments. Courts have consistently held that fraudulent appointments are void ab initio and must be set aside, regardless of the consequences.

30. In the case of **Ram Chandra Singh vs. Savitri Devi (2003) 8 SCC 319**, the Apex Court held that fraud as is well known vitiates every solemn act, fraud and justice never dwells together.

31. If an appointment is found to be based on forgery, the authority has the right to recall the appointment. The individual appointed under such circumstances cannot claim any equity or rights based on their continued service, as the appointment is fundamentally flawed. The aforesaid has been held by the Co-ordinate Bench of this Court in the case of **Usha Singh vs. State of U.P. and another, 2017 SCC Online All 6109**. Also the same has been held by **Madhya Pradesh High in the case of Nageswar Sonkesri vs. State of M.P. and another 2020 SCC Online MP 4461**.

32. In the case of **Vijay Krishnarao Kurundkar and another vs. State of Maharashtra and Others, 2020 SCC Online SC 834**, the Apex Court has consistently held that appointments made on the basis of forged documents are invalid and such appointments are void ab initio and cannot be legitimized by any subsequent actions.

33. In the case of **Jainendra Singh vs. State of U.P., 2012 (8) SCC 748**, Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under :-

"29.1 Fraudulently obtained orders of appointment could be

legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in

uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

(Emphasis supplied by me)

34. Thus, the law in case of appointment obtained fraudulently is well settled. Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together."

35. An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine.

36. It is well settled that if the initial appointment itself was obtained fraudulently then no inquiry in terms of Rules 1999 is required as is held by the Hon'ble Supreme Court in the cases of **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 IC 390 and Rita Mishra Vs. Director, Primary Education, 1988 Lab IC 907**. The Apex Court, in the aforesaid cases, 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.”

37. In the case of **Union of India Vs. Prohlad Guha etc., 2024 SCC OnLine SC 1865** it has been clearly held by the Apex Court that in case the employment has been obtained based on fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek that proper procedure as prescribed under Rule 1999 must be followed.

38. Thus, where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he/she becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void ab initio. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise.

39. A similar type of controversy has also been dealt in **Special Appeal No. 26 of 2007 (Vinay Kumar Shahi Vs. Deon D. Upadhyay & Ors.) Neutral Citation No.-2010:AHC118883-DB** and in **Special Appeal No. - 211 of 2011 (Poonam Shukla Vs. State of U.P. & Others) 2015 LawSuit(AII) 3864.**

40. As regards the submission of learned counsel for petitioner that no opportunity of hearing was granted to the petitioner after inquiring about the certificates from the Vice-Chancellor of the concerned University and the statement of the clerk, it is settled law that no opportunity is to be granted to a person who has played fraud while seeking appointment. The inquiry so conducted by the University was for the purpose of verifying as to whether educational certificates as filed by the petitioner were forged or not and the report reflects about the aforesaid documents being forged. The aforesaid inquiry was a matter of record of the concerned university, therefore, inquiry was conducted and the report was placed accordingly for which no opportunity was to be given to the petitioner.

41. As regards the submission of counsel for petitioner regarding the full

fledged departmental inquiry not being undertaken prior to passing of the impugned order is concerned, the matter has already been dealt in the case of **Kamlesh Kumar Nirankari Vs. State of U.P. & 2 Ors.**, reported in **2025 0 Supreme (All) 3053**.

42. As regards the submission of delay in inquiry in passing the final orders is concerned , in case direction of writ court was not complied with then contempt petition should have been filed. The delay in inquiry was not deliberate as several opportunities were given to the petitioner for the purpose of inquiring about the certificate from the University concerned in which time was required. Even otherwise it is not relevant in the facts of the present case.

43. To the submission as made by counsel for the petitioner regarding violation of Article 311 (2) of the Constitution of India, this Court finds that it is settled proposition of law that protection under Article 311 of the Constitution of India is available only to a person who has been validly and legally appointed to any post under the Union or a State. The Constitutional safeguard presupposes a lawful entry into a service. Where an incumbent secures an appointment by suppression of material facts or by producing forged and/or fabricated documents such an appointment is void ab initio and confers no right to hold the post. The Hon'ble Supreme Court in **R.Vishwanatha Pillai Vs. State of Kerala & Ors** reported in **2004 (2) SCC 105**, **Union of India Vs. M. Bhaskaran** reported in **1995 Supp (4) SCC 100** and others pronouncements has consistently held that fraud vitiates everything and that any appointment obtained by fraudulent means is non est in the eyes of law. In such circumstances, the individual never acquires status of a government servant and therefore cannot invoke the protection of Article 311 of the Constitution of India. Termination of service in such cases wherein appointment has been obtained by fraud is not a penalty attracting requirement of regular departmental inquiry but merely a declaration of the illegality of very appointment itself. The plea that Article 311 mandates inquiry before cancellation of such an appointment is wholly misconceived. Accordingly, it is held that wherein an appointment is obtained on the basis of fake or forged certificates the employer is competent to cancel the same without holding an inquiry under Article 311 of the Constitution of India as such, an incumbent

cannot claim any constitutional protection of tenure.

44. Considering the argument advanced by learned counsel for the petitioner in which he has placed reliance on Smt. Parmi Maurya (Supra), this Court finds that it is well established that in case an employment has been obtained based on fraudulent documents beneficiary of such fraud cannot seek procedure prescribed under the relevant rules or act as not been followed for the purposes of inquiry. The aforesaid has also been held in the case of **District Basic Education Officer Vs. Smt. Punita Singh and 3 Ors.**

45. The other grounds and issues as argued by learned counsel for the petitioner have been dealt by this Court in **Writ-A No. 11846 of 2025 (Virendra Kumar Mishra Vs. State of U.P. and 4 Ors.)** as decided on 19.08.2025.

46. In view of aforesaid discussions, this petition is **dismissed**.

(Mrs. Manju Rani Chauhan,J.)

September 12, 2025
Saurabh