

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (S) No. 1746 of 2015

1. Samaru Ram Netam S/o Shri Maloram Netam Aged About 35 years
Shiksha Karmi Grade III, At Government Primary School Adar Para,
Block Mainpur, District Gariyaband (Chhattisgarh)
2. Dubeshwar Yaduvanshi S/o Shri Dhansai Ram Aged About 34 Years
Shiksha Karmi Grade III, At Government Primary School Dawaripara,
Block Mainpur, District Gariyaband (Chhattisgarh)
3. Laxmikant Diwan S/o Shri Pyare Singh, Diwan Aged About 32 Years
Shiksha Karmi Grade III, At Government Primary School Kachharpara,
Block Mainpur, District Gariyaband (Chhattisgarh)
4. Kamdeo Nagesh S/o Shri Rupdhar Nagesh, Aged About 34 Years
Shiksha Karmi Grade III, At Government Primary School Negipara,
Block Mainpur, District Gariyaband (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural
Development Department, Mantralaya Mahanadi Bhawan, New Raipur
(Chhattisgarh)
2. The Director, Director Of Panchayat, Raipur District Raipur
(Chhattisgarh)
3. The Collector, Gariyaband, District Gariyaband (Chhattisgarh)
4. The Chief Executive Officer, Jila Panchayat Gariyaband, District
Gariyaband (Chhattisgarh)
5. The Chief Executive Officer Janpad Panchayat Mainpur, District
Gariyaband (Chhattisgarh)

---- Respondents

For Petitioners	Shri Sushil Dubey, Advocate
For Respondent/State	Shri P. K. Bhaduri, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

07/05/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioners have assailed the legality and validity of the impugned order dated 28-2-2015, passed by the Collector, Gariyaband, District Gariyaband (C.G.) terminating their services as Shiksha Karmi Grade-III.
3. The petitioners were appointed as Shiksha Karmi Grade-III by order of appointment issued in the year 2007 by Janpad Panchayat Mainpur, District Raipur (now Gariyaband). On receipt of complaint, an enquiry was made and the appointments were cancelled vide order dated 6-12-2008 on the ground that the appointees have been conferred illegal benefit by allotting marks on the basis of forged sports certificates, scouts certificates, experience certificates etc. vitiating the entire selection process. Since the said order of termination was passed without giving any opportunity of hearing to the Shiksha Karmis, they preferred the writ petitions before this Court, one such writ petition being WP (S) No.1392/11; this Court dismissed all the writ petitions vide order dated 20.02.2012, observing that the Collector shall provide proper opportunity of hearing to the petitioners and if the petitioners desire, a personal hearing may also be provided to them.
4. Pursuant to the above observation made by this Court, the Collector, Gariyaband issued show-cause notice and afforded personal hearing to the petitioners. Before the Collector, the petitioners stated that they have not submitted the forged certificates, based on which marks were allotted to them, however, since the petitioners have continued in the services for more than seven years, therefore, they deserve to be regularized on the post of Shiksha Karmi Grade-III.

5. Learned counsel for the petitioners would reiterate the submission and would argue that since the petitioners have not submitted the documents, they cannot be penalized and that the petitioners being continuously in service for last more than 7 years, this Court should consider their case sympathetically.
6. Learned State counsel would submit that the impugned order is unexceptionable, inasmuch as the selection process *vis a vis* the petitioners suffered from such irregularity or illegality, which cannot be cured even by the process of judicial review. He would submit that if the marks on the basis of forged certificates are excluded from calculation, the petitioners remain less meritorious and as such their appointments were void *ab initio*.
7. It appears, the petitioners have been allowed/allotted marks on the strength of sports certificates, scout certificates, experience certificates etc. which were found to be forged. Once it is established that the certificates were forged, the appointments obtained on the basis of such certificates itself become void. Allowing the petitioners to continue as Shiksha Karmi would amount to giving premium to the fraud committed with the recruitment process.
8. It is a trite law that fraud vitiates all actions and any judgment or order obtained by committing fraud is a nullity. In the matter of **Harjeet Singh Chawla Vs. State of Chhattisgarh & Others**¹, this Court in para 11, has held thus:-

“In the matter of **Union of India and others Vs.**

Ramesh Gandhi², the Supreme Court referred its earlier

¹ WP (C) No.7380/2010, passed on 06/04/2015

² (2012) 1 SCC 476

decisions in **S.P. Chengalvaraya Naidu Vs. Jagannath**³ and **A.V. Papayya Sastry Vs. Govt. of A.P.**⁴ and held in paragraphs 25, 26 & 27 thus:-

“25. This Court on more than one occasion held that fraud vitiates everything including judicial acts. In *S.P. Chengalvaraya Naidu v. Jagannath*, this Court observed as follows: (SCC p. 2, para 1)

“1. ‘Fraud avoids all judicial acts, ecclesiastical or temporal’ observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law. Such a judgment/decree—by the first court or by the highest court—has to be treated as a nullity by every court, whether superior or inferior. *It can be challenged in any court even in collateral proceedings.*”

(emphasis supplied)

26. Again in *A.V. Papayya Sastry v. Govt. of A.P.* this Court reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows: (SCC pp. 236-37)

“38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the applicant plaintiff which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. . *All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.*

39. *The above principle, however, is subject to exception of fraud.* Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed

3 (1994) 1 SCC 1

4 (2007) 4 SCC 221

to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.

27. If a judgment obtained by playing fraud on the court is a nullity and is to be treated as non est by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the court by not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest.”

9. In view of the above, the petitioners cannot be granted the benefit of forged certificates, so as to allow them to continue in service.
10. It has also been urged that this Court should sympathetically consider their case, because the petitioners have completed more than 7 years in service. This submission is unacceptable on more than one ground *firstly*: sympathy is an individualistic approach, whereas the Court has to decide cases on the basis of applicable legal principles and *secondly*, if the petitioners are allowed to continue, it would destroy rights of others, who would have been appointed in their place.
11. For the foregoing, the writ petition is dismissed.

JUDGE

Nirala