

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (S) No. 1878 of 2015

1. Smt. Rampyari Kashyap D/o Shri Bhim Lal Kashyap (Wrongly mention in the impugned order Bhimram Kashyap) Aged about 40 years, Shiksha Karmi Grade-III, Primary School Chorbhatti – khurd Tahsil Takhatpur District Bilaspur R/o Village Semaria Tahsil & District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chattisgarh, through : Secretary, Panchayat & Rural Development, Mantralaya Mahanadi Bhawan, New Raipur (CG) Pin 492001
2. Commissioner, Bilaspur Division District Bilaspur (CG)
3. Additional Collector, Bilaspur District Bilaspur (CG) Pin 495001
4. Chief Executive Officer, Janpad Pachayat, Takhatpur, District Bilaspur (CG)
5. Barkatullah University Bhopal Through Registrar, Barkatullah University, Bhopal District Bhopal (Madhya Pradesh)

---- Respondent

For Petitioners
For Respondents

Mr. Dheerendra Pandey, Advocate
Mr. Majid Ali, Panel Lawyer

S.B. : HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

Order On Board

14/05/2015

1. Heard finally with the consent of learned counsel for the parties.
2. In this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the legality and validity of the order dated 22.12.2014 passed by the Additional Commissioner, Bilaspur Division, Bilaspur as also

the order dated 12.10.2012 passed by the Additional Collector, Bilaspur and the termination order dated 06.03.2012.

3. The petitioner was appointed on the post of Shiksha Karmi Grade-III on 23.06.2010 and was posted at Primary School, Khamaria Tahsil Takhatpur District Bilaspur. The petitioner joined on 29.06.2010 and started working on this post. However, she remained absent from duties.

4. Jila Panchayat, Bilaspur vide its letter dated 17.01.2012 directed the petitioner to submit the original certificates, however, the petitioner failed to deposit the certificates. The petitioner also failed to submit reply to the show cause notice. On investigation, it was found that the petitioner has submitted forged mark sheets of Matriculation Certificate and D.Ed Certificate, as the same were never issued by the competent issuing authority.

5. The General Administration Committee of the concerned Panchayat passed a resolution on 05.03.2012 for removing the petitioner pursuant to which the Chief Executive Officer, Janpad Panchayat, Takhatpur passed the impugned order on 06.03.2012 removing the petitioner from the service.

6. Learned counsel for the petitioner has argued that proper and adequate opportunity of hearing was not afforded to the petitioner and the D.Ed. Certificate was earlier verified in which the same was found to be genuine, therefore, the order of removal as well as the orders passed by the Additional Collector and the Additional Commissioner dismissing her appeal and revision deserve to be set aside.

7. The document relied by the petitioner by which his D.Ed Certificate was allegedly verified, has been filed as Annexure P-10. Perusal of the same would reveal that the same has not been issued in the official letter head of the University. When the D.Ed Certificate produced by the petitioner was

verified by the authorities, it was found that the issuing authority i.e. Barkatullah University, Bhopal does not conduct any D.Ed. Certificate course. Thus, the certificate could not have been issued by the said University.

8. The petitioner appears to be claiming the benefit of a fraudulent certificate, therefore, she is not entitled for any relief.

9. In the matter of **Union of India and others Vs. Ramesh Gandhi**¹, the Supreme Court referred its earlier decisions in **S.P. Chengalvaraya Naidu Vs. Jagannath**² and **A.V. Papayya Sastry Vs. Govt. of A.P.**³ 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

1 (2012) 1 SCC 476

2 (1994) 1 SCC 1

3 (2007) 4 SCC 221

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 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.”

7. As a sequel, the writ petition, being bereft of merit, is liable to be and is hereby dismissed at the motion stage itself.

JUDGE