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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 311 of 2015

Puran Singh Pandey S/o Shri Dasru Ram, aged about 38 years Shiksha Karmi Grade III At Government Primary School, Latipara, Block Mainpur, District Gariyaband Chhattisgarh

---- Appellant

Versus

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

---- Respondents

For Appellant : Shri Praveen Das, Advocate.
For Respondent/ State : Shri U.N.S. Deo, Advocate.

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Order On Board

Per NAVIN SINHA, C.J.

22/6/2015

1. The present appeal arises from order dated 21.4.2015 dismissing Writ Petition (S) No. 1375 of 2015. The Learned Single Judge declined to interfere with the order dated 28.2.2015 passed by the Collector, Gariyaband terminating services of the Appellant as Shiksha Karmi Grade-III (now called Shikshak Panchayat).

2. Learned Counsel for the Appellant submitted that the primary contention on his behalf that the order of termination issued by the Collector was completely without jurisdiction has not been considered or

dealt with at all. It was submitted that under Rule 9 of the Shiksha Karmis (Recruitment and Conditions of Service), Rules 1997 (hereinafter called the 'Rules') the Appellant being an employee of the Janpad Panchayat, the administrative control including power for termination lay with the General Administration Standing Committee of the Janpad Panchayat alone. Section 47 of the Panchayat Act provides for Constitution of the General Administration Standing Committee. The Collector, if he was of any opinion that the appointment was bad in law, he was required to forward his recommendation to the General Administration Standing Committee which alone was competent in law to take a final decision. The Collector having usurped the statutory powers of the General Administration Standing Committee, the order is bad on the face of it as completely without jurisdiction.

3. Learned counsel for the State has opposed the appeal and supported the order under challenge.

4. The Petitioner was appointed as a Shiksha Karmi Grade-III in 2007 by Janpad Panchayat, Mainpur. On a complaint, enquiries were made with regard to him and others and the appointments canceled on 6.12.2008 as having been obtained on basis of forged certificates. The order having been passed in violation of the principles of natural justice, in one such writ petition, Writ Petition (S) No. 1392 of 2011, dismissing a batch of writ petitions on 20.2.2012 this Court directed the Collector to provide an opportunity of hearing. The Collector was therefore vested with the jurisdiction and authority for hearing by the Court. After complying with the principles of natural justice the appointment of the Appellant has been terminated on the very same ground as having been obtained on basis of forged certificates.

5. In view of the earlier order of the Court, vesting authority in the

Collector, the present cannot be construed as usurpation of jurisdiction passed by him simplicitor. It was at best an irregularity as perhaps the attention of the Court may not have been invited to Rule 9. But in the facts of the case, we need not go into that question. The Learned Single Judge, in our opinion, rightly held that no benefit obtained by fraud could be allowed to be retained. This general principle, in our opinion applies more forcefully to appointments in Government or Semi-Government organizations regulated by Article 14 of the Constitution of India. If a person obtains a benefit by fraud, the remedy under Article 226 of the Constitution is not available to such a person. Any interference on the grounds as urged on behalf of the Appellant, shall result in reviving an illegal order of appointment. It is trite law that the writ Court should not interfere merely because it may be proper for it to interfere. The exercise of power under Article 226 being discretionary, we do not find that the Learned Single Judge has exercised the discretionary jurisdiction arbitrarily sans reasons.

6. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE

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