

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 3105 of 2015**

- Gopal Das Kurre S/o Babulal, Aged About 30 Years Terminated Shiksha Karmi, Class - III , Primary School Navagaon 'B', Revenue And Civil District - Bemetara Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through - The Secretary, Department Of Panchayat And Rural Development Mahandi Bhawan, New Raipur, Civil & Revenue District Raipur Chhattisgarh
2. The Collector, Bemetara, Civil & Revenue District - Bemetara Chhattisgarh
3. Zila Panchayat (Bemetara), Through Chief Executive Officer, Zila Panchayat, Bemetara, District Bemetara Chhattisgarh
4. Janpad Panchayat, Berla, Through - Chief Executive Officer, Janapd Panchayat Berla, Civil & Revenue District - Bemetara Chhattisgarh

**---- Respondents**

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| For Petitioner       | Ms. Sareena Khan, Advocate on behalf of Shri Sudhir Verma, Advocate |
| For Respondent/State | Shri Y.S. Thakur, Dy. AG                                            |

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**Hon'ble Justice Shri Prashant Kumar Mishra**

**Order On Board By**

**26/08/2015**

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner would call in question the impugned order passed by the Collector, Bemetara dismissing his appeal against the order dated 23.06.2014 passed by the Chief Executive Officer (for short 'the CEO'),

Janpad Panchayat, Berla terminating his services as Shiksha Karmi Grade-III.

3. Facts of the case, briefly stated, are that in the recruitment of Shiksha Karmi in Janpad Panchayat Berla, the petitioner along with 85 other candidates, whose services have now been terminated, were appointed in the year 2007. On receiving complaint that the appointment has been obtained by producing forged certificate, the appointments were cancelled. The petitioner and other similarly placed persons had preferred WP(S) No.5929/2008, which was allowed on the ground that before terminating their services, only 7 days notice was issued, which was not proper compliance of principles of natural justice. However, liberty was reserved in favour of the authorities to take appropriate steps in accordance with law after affording proper opportunity of hearing. Some other writ petitions were decided by this Court in similar terms in January, 2014. The CEO thereafter issued notice to the petitioner and other similarly placed persons and after providing opportunity of hearing, the appointments were cancelled on 23.06.2014. The order passed by the CEO has been affirmed by the Collector by the impugned order.
4. Learned counsel for the petitioner would refer to the resolution passed by the Janpad Panchayat on 09.06.2014, whereby it was resolved by the Janpad Panchayat that all the Shiksha Karmis have already put in 7 years of service and have completed the period of probation, therefore, on humanitarian ground as also in view of principles of natural justice; their family conditions; mental state; psychological effect; social status and sentiments, their services should be continued. Thus, it is argued that the order of termination is contrary to

the resolution passed by the Janpad Panchayat.

5. Per contra, Shri Yashwant Singh Thakur, learned Deputy Advocate General would submit that the CEO has taken action after holding an enquiry, wherein the certificates were found to be forged, therefore, the petitioner is not entitled to continue in the service. He would submit that the conduct of the petitioner in producing forged certificates, disentitles him to seek remedy under Article 226 of the Constitution of India.
6. The order passed by the Collector would indicate that the petitioner was awarded 4.5 marks on account of sports certificate, which was later on got verified from the office of the Superintendent of Police, Raipur and it was found to be forged. Similarly, certificates produced by the other candidates were also found to be forged and the marks awarded to them on the basis of forged certificate were reduced. Resultantly, the petitioner and other similarly placed candidates fell out of the merit list. At this stage, learned counsel for the petitioner would submit that even after reducing the marks awarded on the basis of forged certificate, the petitioner would secure 51.66 marks and on this basis, he would be at Serial No.15 in the list of 22 candidates, who found place in the merit list, therefore, the petitioner is still entitled for appointment. Neither reply to the show cause notice preferred by the petitioner before the CEO (Annexure-P-8) nor the order passed by the Collector would reflect that any such ground was raised at any point of time by the petitioner. There is no document available in the record to prove that the last selected candidate in the merit list had secured less marks than the petitioner.

7. It is settled law that the writ Court do not exercise jurisdiction merely on sympathy. Any order purely based on sympathy would be contrary to the legal provision. To invoke Article 226 of the Constitution of India, the petitioner has to rely on his constitutional or legal rights.
8. It is well settled proposition of law that an order based on fraud is a nullity and the same can be set at naught at any point of time even in collateral proceeding.
9. In a leading English case **Derry Vs. Peek**, (1886-90) ALL ER 1, it has been described that fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.
10. In the matter of **Shrisht Dhawan (Smt) Vs. M/s Shaw Brothers**, (1992) 1 SCC 534, it has been held that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'.
11. It has been defined as an act of trickery or deceit. In **Websters Third New International Dictionary** fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In **Black's Legal Dictionary**, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false

representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In **Concise Oxford Dictionary**, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to **Halsbury's Laws of England**, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact.

12. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.
13. Yet again in the matter of **S.P. Chengalvaraya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs. and others, (1994) 1 SCC 1** it has been held thus in paragraph 1 that "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is thus settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of 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 and further that a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a cheating intended to get an advantage.

14. Similarly, the law is well settled that when appointments have been obtained on the basis of forged certificates, the employee has no right to hold the post as the same is void at its inception.
15. For all the aforesaid reasons, this Court does not find any substance in the writ petition, it fails and is hereby dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala