

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2463 of 2014

- Om Prakash Koshale S/o Shri Konudas Koshale Aged About 27 Years
R/o Gram/Post - Bijaradih, Chauki Gidhpuri, P.S. Palari, Distt. Baloda
Bazar Bhatapara, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of
Panchayat & Rural Development, New Mantralaya, Mahanadi -
Bhawan New Raipur Distt. Raipur C.G.
2. Collector Gariyaband, Dist. Gariyaband C.G.
3. Collector Raipur, Dist. Raipur C.G.
4. District Education Officer Raipur, Dist. Raipur C.G.
5. Chief Executive Officer, Zila Panchayat Raipur, C.G.
6. Chief Executive Officer, Janpad Panchyat Devbhog, Dist. Raipur C.G.
7. Block Education Officer Development Block Devbhog, Dist.
Gariyaband C .G.

---- Respondents

For Petitioner	Shri Mateen Siddiqui, Advocate
For Respondent/State	Shri Sangharsh Pandey, Dy. GA
For Respondent No.6	Shri Harsh Wardhan, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

08/10/2015

1. With the consent of the learned counsel for the parties, the matter is
heard finally.

2. The petitioner would assail the order (Annexure-P-1), whereby the Chief Executive Officer (for short 'CEO'), Janpad Panchyat, Devbhog, District Gariyaband has rejected his representation for his joining on the post of Shiksha Karmi Grade-III.
3. Placing reliance on an order of appointment purportedly issued by the concerned CEO on 24.10.2011, the petitioner preferred WPS No.3404/2013 to seek direction to the concerned Block Education Officer for allowing him to join as Shiksha Karmi Grade-III. The writ petition was disposed of on 18.10.2013 with a direction that in the event, the petitioner's appointment is operative, if he submits joining before the concerned competent authority within one month, the said authority shall allow him to join the services and if for any valid reason or legal impediment, he cannot be allowed to join, the authority shall pass express order assigning reason for such dis-allowance of joining the services. Pursuant to the said order, the petitioner's representation was considered and has been rejected by the impugned order.
4. The recruitment of Shiksha Karmi Grade-III was made by the concerned Janpad Panchayat in the year 2007-08, although the petitioner was called for counseling, but the order of appointment was never issued in his favour. From what has been observed by the Janpad Panchayat in Annexure-P-1, it would appear that the order of appointment relied by the petitioner is a fake document. It is stated that no such order has originated from the Office of CEO, Janpad Panchayat, Devbhog nor the General Administration Committee of the Janpad Panchayat has recommended the petitioner's name for appointment at any point of time. Learned counsel has tried to impress upon the Court by pointing out the contradictions in the impugned

order. However, perusal of the order would only indicate that the CEO has mentioned all such things, which would dis-entitle the petitioner to claim appointment or joining on the post. If in addition to the observation that the appointment order itself is fake, the CEO has mentioned other reasons for disallowing the representation, it can never be said that the order is self contradictory.

5. The Supreme Court in **S.P. Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and Others**¹, held thus :

“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 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.”

6. In **Union of India and Others v. Ramesh Gandhi**², the Supreme Court held 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)

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(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)

1 (1994) 1 SCC 1

2 (2012) 1 SCC 476

“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 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.”

(emphasis supplied)

7. The decision rendered in **S.P. Chengalvaraya Naidu** (supra), has again been followed in **Dalip Singh v. State of Uttar Pradesh and Others**³ and **Union of India and Others v. Major S.P. Sharma and Others**⁴.

8. Be that as it may, once the petitioner has been informed that the order of appointment produced by him is fake document, it was for the petitioner to contradict and contest the said statement in the impugned order. The petitioner has not pleaded nor any document is filed with the writ petition to demonstrate that the Janpad Panchayat infact issued a select list mentioning petitioner's name or at any subsequent

3 (2010) 2 SCC 114

4 (2013) 10 SCC 150

point of time, the General Administration Committee of the Janpad Panchayat had recommended his name for appointment and thereafter the appointment order was issued.

9. Since no appointment order was issued in petitioner's favour, his claim for appointment or joining on the post has no substance. Accordingly, the writ petition is dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala