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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1183 of 2015**

1. Rajkumar Gayakwad Shri Sukhelal Gayakwad Aged About 45 years Earlier Working as Shikshakarmi Grade III At Primary School Motipani, Gram Panchayat Bhutbeda, Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
2. Yagyadeo Sahu S/o Shri Chinta Ram Sahu Aged About 34 Years Earlier Working On The Post Of Shikshakarmi Grade III At Primary School Patiyalpara, Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
3. Sheikh Imamudin S/o Shri Sheikh Hameed Aged About 30 Years Earlier Working On The Post Of Shikshakarmi Grade III At Primary School Mainpur, Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
4. Dilip Kumar Narang S/o Shri Sukharu Ram Narang Aged About 39 Years Earlier Working On The Post Of Shikshakarmi Grade III At Primary School Bhathapani, Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
5. Lukeshwar Kumar Sahu S/o Atmaram Aged About 27 Years Earlier Posted as Shikshakarmi Grade III At Primary School Koyaba, Block Mainpur, District Gariyaband (C.G.)

---- Petitioners**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Panchayat & Rural Development Mahandi Bhawan, Capital Complex, Mantralaya, New Raipur District Raipur Chhattisgarh
2. The Deputy Director Panchayat & Social Welfare Department, Raipur, District Raipur Chhattisgarh
3. The Collector Gariyaband, Distt. Gariyaband Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
5. The Block Education Officer Mainpur, District Gariyaband Chhattisgarh

---- Respondents**And****WPS No. 1186 Of 2015**

1. Smt. Laxmi Shree Sahu W/o Shri Dwarika Prasad Sahu Aged About 27 years Earlier Posted as Shikshakarmi Grade III At Middle School Tribal Ashram Block Mainpur, District Gariyaband Chhattisgarh
2. Smt. Devla Thakur W/o Budhram Thakur Aged About 35 Years Earlier Working as Shikshakarmi Grade III At Middle School Achanpur , Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
3. Ku. Meena Diwan D/o Shri Anand Ram Diwan Aged About 26 Years Earlier Working as Shikshakarmi Grade III At Primary School Kanharpara, Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
4. Ku. Ritu Yadav D/o Shri Tukeshwar Yadav Aged About 26 Years Earlier posted as Shikshakarmi Grade III At Primary School Tribal Aashram Kalimati, Block Mainpur, District Gariyaband Chhattisgarh
5. Smt. Savitri Nishad W/o Shri Komal Nishad Aged About 30 Years Earlier Posed as Shikshakarmi Grade III At Primary School Badgaon, Block Mainpur, District Gariyaband Chhattisgarh

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, Department Of Panchayat & Rural Development, Mahanadi Bhawan, Capital Complex, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. The Deputy Director Panchayat & Social Welfare Department, Raipur, District Raipur Chhattisgarh
3. The Collector Gariyaband, Distt. Gariyaband Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh
5. The Block Education Officer Mainpur, District Gariyaband Chhattisgarh

---- Respondents

For Petitioners	:	Shri MK Jaiswal, Advocate
For Respondent/State	:	Shri Y.S. Thakur, Dy. AG for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

08/04/2015

Heard learned counsel for the parties.

1. The petitioners have assailed the legality and validity of the impugned order dated 28-2-2015, passed by the Collector, Gariyaband, terminating their services as Shiksha Karmi Grade-III.
2. All 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 Graiyaband). 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.
3. Pursuant to the above observation made by this Court, the Collector, Gariyaband issued show-cause notice and afforded personal hearing to each of 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 they have continued in the services for more than seven years, therefore, they deserve to be regularized on the post of Shiksha Karmi Grade-III.
4. 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 cases sympathetically.

5. Learned Dy. Advocate General would submit that the impugned order is unexceptionable, inasmuch as the selection process *viz a viz* each of the petitioner 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 appointment was void *ab initio*.
6. 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 appointment obtained on the basis of such certificates itself becomes void. Allowing the petitioners to continue as Shiksha Karmi would amount to giving premium to the fraud committed with the recruitment process.
7. 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 Gandhi**², the Supreme Court referred its earlier decisions in **S.P. Chengalvaraya Naidu Vs. Jagannath**³ and **A.V.**

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

² (2012) 1 SCC 476

³ (1994) 1 SCC 1

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 to stand. This is the fundamental principle of law and

⁴ (2007) 4 SCC 221

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.”

8. In view of the above, the petitioners cannot be granted benefit of forged certificates, so as to allow them to continue in service.
9. It has also been urged that this Court should sympathetically consider their cases, 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, *secondly*: if the petitioners are allowed to continue, it would destroy rights of several others, who would have been appointed in their places.
10. For the foregoing, both the writ petitions are dismissed.

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