

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.7324 of 2003

%30-11-2016

Between:

Smt. M. Indira

... PETITIONER

a n d

\$The Executive Board, Nizam's Institute of Medical Sciences, Panjagutta, Hyderabad, rep. by its Vice-President and others

... RESPONDENTS

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> HEAD NOTE:

!Counsel for petitioner: Sri V. Ravi Kiran Rao

^Counsel for Respondents: Sri G. Anandam, Standing Counsel

? Cases referred

1. 2001 AIR SCW 1025
2. 1995 Supp (4) Supreme Court Cases 100
3. (2013) 9 Supreme Court Cases 363

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

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JUDGMENT PRONOUNCED ON : **30-11-2016**

THE HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers : No
may be allowed to see the judgments?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : Yes
see the fair copy of the judgment?

THE HON'BLE SRI JUSTICE A.V. SESA SAI**WRIT PETITION No.7324 of 2003****ORDER:**

Challenge in the present writ petition is to the order of punishment passed by the Executive Registrar, Nizam's Institute of Medical Sciences vide proceedings Rc.No.3/78/89/H2, dated 30-11-2001.

The facts and circumstances, leading to filing of the present writ petition are as under:

While working as Computer Assistant in Nizam's Institute of Medical Sciences the petitioner herein was served with a show cause notice, dated 15-03-1999, asking to show cause as to why disciplinary enquiry should not be initiated on the ground that the petitioner herein produced a degree certificate from a fake University namely Commercial University Limited, New Delhi.

In response to the same, the petitioner herein submitted her explanation on 17-03-1999 and thereafter once again another similar show cause notice was issued on 13-03-2000 and for which the petitioner herein submitted explanation on 14-03-2000, reiterating the earlier explanation. Subsequently, the 3rd respondent issued a charge memo bearing Rc.No.3/78/89/H2, dated 23-07-2001, framing the following charge:

“SMT.M. Indira, Sr. Computer Asst. has furnished B.Com. degree certificate issued by fake university, i.e., commercial university Ltd., Darya Ganj, New Delhi.”

Responding to the said charge sheet, the petitioner herein submitted explanation on 06-08-2001. Thereafter the Disciplinary Authority appointed an Enquiry Officer on 29-09-2001. The Enquiry Officer, so appointed issued a notice bearing Rc.No.4/28/90/H4, dated 19-10-2001 and asked the petitioner to attend for oral enquiry on 20-10-2001 at 11.00 A.M., and the petitioner herein attended the said enquiry and thereafter the Enquiry Officer submitted a report, finding that the charge was held proved.

Subsequently, the Disciplinary Authority issued a show cause notice bearing Rc.No.3/78/89/H2, dated 03-11-2001, asking the petitioner to show cause as to why disciplinary action should not be taken against her under Rule 7 of N.I.M.S. Employees (Control and Appeal) Rules within a period of fifteen (15) days from the date of receipt of said show cause notice. Thereafter the petitioner sought certain documents as indicated in the enquiry report vide letter, dated 17-11-2001 for offering explanation. But the Disciplinary Authority by way of letter bearing Rc.No.3/78/89/H2, dated 20-11-2001 furnished only a copy of Rule 7 of the above said Rules and refused to furnish other

documents sought. Thereafter the petitioner submitted her explanation to the show cause notice on 23-11-2001.

Eventually, the Disciplinary Authority passed an order vide Rc.No.3/78/89/H2, dated 30-11-2001, inflicting on the petitioner the major punishment of 'reduction to lower post of Record Assistant for which the petitioner was initially recruited and with minimum of the pay scale of Record Assistant'.

The petitioner herein assailed the said order of punishment inflicted by Disciplinary Authority by way of filing appeal on 18-12-2001 before the Appellate Authority. The Appellate Authority rejected the said appeal and the same was communicated by the Executive Registrar of the respondent institution vide Note Rc.No.3/78/89/M2, dated 08-11-2002.

In the above background, the present writ petition came to be filed.

Responding to the *rule nisi* issued by this Court, a counter-affidavit deposed by the Executive Registrar of the respondent institution has been filed on behalf of the respondents, denying the averments and allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

A reply affidavit is also filed by the writ petitioner.

Heard, Sri V. Ravi Kiran Rao, learned counsel for the petitioner and Sri G. Anandam, learned Standing Counsel for respondent institution.

Submissions/contentions of learned counsel for the petitioner:

1. The questioned orders are highly illegal, arbitrary and un-reasonable, without jurisdiction and violative of Article 14 of the Constitution of India.
2. Since it is not the allegation against the petitioner that she fraudulently produced a certificate to secure the post, the authorities are not justified in inflicting the punishment.
3. The Enquiry Officer grossly erred in indicating the nature of punishment and the mode and manner in which the Enquiry Officer conducted enquiry is patently erroneous and alien to the service jurisprudence.
4. The fakeness of the of the University came to light in the year 1994 when the University Grants Commission issued a notification to the said effect.
5. Neither the Disciplinary Authority nor the Appellate Authority considered the material on record from proper perspective.

6. Failure to furnish the documents sought by the petitioner for submission of explanation to the show cause notice vitiated the entire disciplinary proceedings and is violative of principles of natural justice.
7. The impugned action is violative of N.I.M.S. Employees (Control and Appeal) Rules and N.I.M.S. Employees Conduct Standing Orders of 1995.
8. Rules do not authorize the respondents to inflict the punishment of 'reduction of rank with minimum pay'.

In support of his submissions/contentions learned counsel for the petitioner places reliance on the following judgments:

1. 2001 AIR SCW 1025
2. AIR 1991 Supreme Court 295

Submissions/contentions of learned Standing Counsel for the respondent institution:

1. There is neither illegality nor procedural infirmity in the impugned action and in absence of the same the impugned orders are not amenable for any judicial review under Article 226 of Constitution of India.
2. Since the petitioner produced a degree certificate from a fake University, the Disciplinary Authority correctly inflicted the punishment and the Appellate Authority affirmed the same.

3. Since the respondents strictly and meticulously adhered to the procedure stipulated under the relevant Rules, the present writ petition is liable to be dismissed in absence of any perversity.
4. The contention that the alleged misconduct does not fall under the Standing Orders cannot be sustained in view of the express language employed in the said Standing Orders.
5. The absence of knowledge as pleaded by the petitioner is of no consequence for adjudication of the present issue and the conduct of the petitioner attracts the definition of moral turpitude.
6. Acquisition of necessary qualifications at a latter point of time cannot be a ground to claim the equities and the persons who produced the bogus certificate cannot claim any equities.
7. Suppression of fact amounts to moral turpitude on the part of the petitioner.
8. Though the allegation against the petitioner is very serious the respondents took a lenient view while inflicting the punishment as such the interference of this Court is not warranted.

In support of his submissions/contentions learned Standing Counsel places reliance on the following judgments:

1. 1995 Supp (4) Supreme Court Cases 100
2. (2013) 9 Supreme Court Cases 363.

In the above backdrop, now the issues, which this Court is called upon to consider and resolve, are:

1. *Whether the impugned orders of punishment passed by the Disciplinary Authority as confirmed by the Appellate Authority are sustainable and tenable?*
2. *Whether the petitioner is entitled for any relief from this Court under Article 226 of Constitution of India?*

The petitioner herein is an offspring of an employee in defense. The information available before this Court vividly reveals that the petitioner herein got B.Com., graduation degree in the year 1982 from the Commercial University Limited, Darya Ganj, New Delhi and she joined in the respondent institution in the year 1987 as Record Assistant and the qualification required for holding the said post at the relevant point of time was only S.S.C. But however, the petitioner herein also produced the said graduation certificate. Subsequently, in response to a notification issued by the respondent institution in the year 1989, notifying the Computer Assistant post, the petitioner herein also offered herself as an in-service candidate and with the said graduate

qualification she got appointment as Computer Assistant in the year 1989.

On 15-03-1999, a show cause notice was issued, alleging that the petitioner acquired B.Com., qualification from Commercial University Limited, New Delhi and as per the information furnished by the Joint Secretary, University Grants Commission, New Delhi the said University is a fake University. In response to the said show cause notice, a reply was also given by the petitioner on 17-03-1999, stating that the University Grants Commission had taken steps in the year 1994 and communicated to all the Universities and given wide publicity with regard to existence of 25 fake Universities in the country including the Commercial University Limited, New Delhi. She also pleaded no malafide intention and lack of knowledge with regard to existence of fake Universities.

Surprisingly, another similar show cause notice was issued by the respondents on 13-03-2000 and it was also replied to by the petitioner, reiterating earlier stand.

For the reasons not forthcoming, after maintaining silence for a period of approximately one year four months the 3rd respondent issued a charge memo, framing the instant charge. The language of the said charge shows that the respondents decided to launch Disciplinary Enquiry on the ground that the petitioner produced a degree certificate

issued by a fake University. But it is not the allegation that the petitioner herein fraudulently produced the said certificate.

It is also significant to note in this context that the University Grants Commission only in the year 1994 vide D.O.No.F.7-5/93(cpp-I), dated 08-07-1994 communicated that there were twenty five (25) fake Universities/ Vishwavidyalayas in the country. The last paragraph of the said communication reads as under:

“The commission shall be grateful if wide publicity is given within the state so that students may not be cheated by these fake institutions. It may also be brought to the notice of the students and the academic community at large that any one dealing with such fake institutions will be doing so at his/her own risk/responsibility as degree/diplomas/certificates awarded by such fake institutions are not treated as valid for academic/employment purposes. A press release in this regard is being issued by the commission separately.”

In fact, in the explanation to the charge memo, the petitioner herein stated all these aspects. It is also important to note that the Enquiry Officer who was appointed by the Disciplinary Authority on 29-01-2001, by way of letter, dated 19-10-2001 asked the petitioner to appear for enquiry on 20-10-2001 at 11.00 A.M., and on which date the petitioner herein appeared and in fact she submitted a representation

also before the Enquiry Officer on 20-10-2001, stating that she did not mislead the institution on her own at any stage and requested to drop all the allegations and further requested the authorities to relax the qualification also.

The Enquiry Officer on the same day i.e., on 20-10-2001 submitted his report. A perusal of the report of the said Enquiry Officer vividly shows that the Enquiry Officer acted beyond his jurisdiction and recommended for inflicting major punishment, obviously transgressing his parameters.

In fact, after receipt of show cause notice of punishment, dated 03-11-2001 the petitioner herein by way of representation, dated 17-11-2001 requested the Disciplinary Authority to furnish the following documents:

- a) Comments of all the administrators.
- b) Supreme Court Orders.
- c) Rule 7 of NIMS Employees (Control & Appeal)

In fact, the Enquiry Officer referred to the said documents in his enquiry report but by way of a letter, dated 20-11-2001 the Disciplinary Authority furnished only a copy of Rule 7 of N.I.M.S. Employees (Control and Appeal) Rules but declined to furnish the rest of the documents referred to by the Enquiry Officer and stated to have been relied upon.

The petitioner herein submitted an elaborate explanation on 23-11-2001, running into nearly nine (9) pages, highlighting various aspects but the Disciplinary Authority, curiously without referring to any one of the contents of the said explanation and without recording any reasons much less valid reasons for discarding the explanation of the petitioner passed the order of punishment on 30-11-2001. Aggrieved by the said orders of punishment the petitioner filed appeal and the appellate authority also rejected the appeal.

A perusal of the said orders of the disciplinary and appellate authorities demonstrates, in clear terms, that the authorities did not consider various issues raised and urged by the petitioner from proper perspective nor they assigned any reasons much less valid reasons for inflicting the punishment.

It is absolutely not the case of the respondents that the petitioner herein played fraud on the authorities nor it is their case that the petitioner acted in a malafide and dishonest manner and deceived the respondent authorities. It is also not the case of the respondents herein that the petitioner herein produced the degree certificate subsequent to University Grants Commission's communication.

On the other hand, it is their case that the petitioner produced a certificate issued by a fake University and it is not their case that she intentionally and knowingly produced the fake certificate.

According to the petitioner, she had no knowledge that the University from which she got the degree was a fake University till the University Grants Commission declared so in the year 1994. So, by any stretch of imagination the petitioner herein cannot be faulted nor she can be penalized and punished.

It is also important to note that in the year 2000 she secured degree qualification also from Dr.B.R. Ambedkar Open University. This Court, finds sufficient force in the submission of learned counsel for the petitioner that if the petitioner had any fraudulent intention she would not have produced B.Com., degree certificate at the time of joining service as Record Assistant in the year 1987 when the fact remains that the qualification required for the Record Assistant at relevant point of time was only S.S.C.

Another important aspect is that though the petitioner sought certain documents on which the Enquiry Officer placed reliance, after receipt of the show cause notice of the removal, for the purpose of submitting explanation, the Disciplinary Authority refused to furnish the documents and

the said conduct on the part of the respondents is a patent violation of principles of natural justice and the said latches vitiates the entire proceedings which culminated in the impugned orders.

Yet another contention advanced by the learned counsel for the petitioner is that the order of punishment is beyond the scope of Rule 7 of N.I.M.S. Employees (Control and Appeal) Rules and in order to decide the same it would be appropriate to refer to the said Rule 7 of the Rules, which reads as under:

“7. MAJOR PENALTIES:-

- i. *Reduction to a lower rank or a lower post or to a lower pay scale or to a lower stage in a pay scale or to a lower rank in the seniority list.*
- ii. *Compulsory retirement.*
- iii. *Removal from service which shall not ordinarily be a disqualification for future employment.*
- iv. *Dismissal which shall ordinarily be a disqualification for future employment.”*

In the instant case, the punishment imposed is reduction to the lower grade i.e., the Record Assistant with minimum of the pay-scale of the Record Assistant.

In fact, the above Rule does not empower nor authorizes the Disciplinary Authority to impose such a nature of punishment of reduction to lower grade with minimum pay.

On this ground also the impugned punishment order is liable to be set aside.

In case of ***Buddhi Nath Chaudhary and others v. Abahi Kumar and others***¹, the Hon'ble Apex Court at paragraph No.6 held as under:

“6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup vs. State of Haryana & Ors., 1979 (1) SCC 168; District Collector & Chairman, Vizianagaram Social

¹ 2001 AIR SCW 1025

Welfare Residential School Society, Vizianagaram & Anr. vs. M. Tripura Sundari Devi, (1990) 3 SCC 655; and H.C. Puttaswamy & Ors. vs. The Honble Chief Justice of Karnataka High Court, Bangalore & Ors., 1991 Supp. (2) SCC 421. Therefore, we must let the matters lie where they are.”

Coming to the judgment cited by the learned Standing Counsel for respondents in case of **Union of India and others vs. M. Bhaskaran**², the Hon'ble Apex Court at paragraph No.6 held as under:

“It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the concerned railway employees, respondents herein, have admittedly snatched employment in Railway service, may be of a casual nature, by relying upon forged or bogus casual labourer cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the concerned employees. Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant employer while getting employed in Railway service and had Snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer cards. Learned counsel for the respondents submitted that for getting service in Railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual

² 1995 Supp (4) Supreme Court Cases 100

service cards. If that was so there was no occasion for them to produce such bogus certificates/service cards for getting employed in Railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in Railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1) (i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer. In this connection we may usefully refer to a decision of this Court in [District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. V. M. Tripura Sundari Devi](#) (1990) 3 SCC 655. In that case Sawant, J.

speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the concerned candidate acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is

difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual Labourers, started departmental proceeding years back in 1987 and these proceedings have dragged on for number of years. Earlier removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand, fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject matter of the present proceedings. Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents, then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted.”

In case of **Devendra Kumar v. State of Uttaranchal and others**³, the Hon’ble Apex Court held that the authorities cannot be faulted for dispensing with the service of the employees who obtain employment by playing fraud/misrepresentation/suppression of information sought by the employer.

³ (2013) 9 Supreme Court Cases 363

In case of **M. Bhaskaran** (2nd cited), on the basis of bogus and forged Casual Labour service cards certain people obtained employment and on the facts of the said case the Hon'ble Apex Court held that the punishment of removal was appropriate while setting aside the orders passed by the Central Administrative Tribunal.

In the instant case, it is not the allegation against the petitioner herein that the petitioner herein produced a fake and forged certificate. On the other hand, it is the specific charge against the petitioner herein that she produced a certificate issued by a fake University, which came to light only in the year 1994 pursuant to the communication sent by the University Grants Commission. Therefore, the said judgments in the facts and circumstances of the case would not render any assistance to the respondents herein.

In case of **Devendra Kumar** (3rd cited), the employee suppressed the factum of his involvement in a criminal case and the Hon'ble Apex Court ruled that the termination on the ground of fraud and misrepresentation in suppression of information were justified.

In the instant case, the said contingency is totally lacking and it is never the case of the respondents herein that the petitioner herein with deliberate intention of deceiving the

respondents knowingly produced the certificate issued by a fake University. Therefore, the principles laid down in the said judgment also would not render any assistance to the respondents herein.

Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned orders passed by the Disciplinary Authority as confirmed in appeal cannot stand for judicial scrutiny and they are liable to be set aside.

Accordingly, the writ petition is allowed, setting aside the order of punishment passed by the 3rd respondent vide proceedings Rc.No.3/78/89/H2, dated 30-11-2001 as confirmed in the appeal vide communication note Rc.No.3/78/89/M2, dated 08-11-2002. It is also made clear that the petitioner herein is entitled to all the consequential benefits.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

November 30, 2016

*Note: L.R. copy to be
marked. B/o.Pn*

THE HON'BLE SRI JUSTICE A.V. SESA SAI



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November 30, 2016

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