

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.16835 of 2014
DATE OF DECISION: 01.02.2016**

Jasbir Kaur

...Petitioner

Versus

CAT, Chandigarh Bench and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL.

HON'BLE MR. JUSTICE RAJ MOHAN SINGH.

Present: Mr. Dhruv Gupta, Advocate for
Mr. Arun Luthra, Advocate for the petitioner.

None for respondents No.1 and 2.

Mr. Aman Chaudhary
for respondents No.3 to 7.

RAJ MOHAN SINGH J.

1. This writ petition has been directed against the order dated 14.11.2013 passed by Central Administrative Tribunal, Chandigarh Bench whereby the Original Application filed by the petitioner was dismissed.

2. Petitioner was appointed as Group-D employee on regular basis on 09.01.1986. Petitioner alleged that at the time of appointment, her antecedents and educational qualifications were duly gone into by the Competent Authority. Petitioner was charge-sheeted vide charge-sheet dated 25.06.2010 on the allegation that the certificate on the basis of which the petitioner sought

appointment was from unrecognized institution whereas the qualification prescribed for Group-D post was middle pass from a recognized institution. The date of birth of the petitioner could not be verified in the absence of transfer certificate issued by the institution hereinafter known as Adarsh High School, Bhatinda.

3. The petitioner could not produce certificate of examination conducted by the Board or the original transfer certificate issued by Adarsh High School, Bhatinda from where middle class qualification was allegedly obtained by the petitioner. Respondent-Department alleged that the employment obtained by the petitioner was on account of certificate which was not from recognized institution and was fake and fraudulent. The objection was raised at the time of audit. The charges were gone into by the Inquiry Officer wherein charges No.II to IV of the charges were duly proved. After due process, a penalty of removal from service was imposed upon the petitioner vide order dated 11.12.2006 on the ground that petitioner had secured the employment on the basis of certificate from unrecognized institution i.e. Adarsh High School, Bhatinda which was not affiliated to Punjab School Education Board in the year 1973-74 (The year of obtaining alleged certificate of 8th pass). Even the said school was not found to be in existence and transfer certificate issued by such institution was also found to be fake. During the course of inquiry, the petitioner could not produce the certificate of having passed 8th class despite number of opportunities granted to the petitioner.

4. The petitioner remained unsuccessful in the appeal filed against the order dated 11.12.2006, which was dismissed by the Appellate Authority on 25.06.2010. Thereafter, petitioner impugned the action of the respondent Authority in Original Application before the Central Administrative Tribunal at Chandigarh.

5. The assertion of the petitioner that the certificate of essential qualification obtained by her was genuine, could not be substantiated by way of producing any such document on record, despite reasonable opportunities granted to her. Procedure adopted by the Inquiry Officer could not be assailed at the threshold of violation of principles of natural justice, nor it could be pointed out that there was infraction of any lawful criteria in conducting inquiry, nor the inquiry conducted by the competent person was found to be actuated with malice. The Tribunal recorded findings of fact to the effect that Adarsh High School, Bhatinda was not affiliated with Punjab School Board in the year 1973-74 i.e. the year in which qualification of 8th class was allegedly obtained by the petitioner. Even the said school was not found to be in existence, nor the certificate in question could be verified from the school. The petitioner obtained the employment by showing that she was studying in 9th class and there was presumption that the petitioner had the qualification of 8th class while undertaking study in 9th class. The petitioner could not produce certificate of 8th pass from any recognized institution which was an essential qualification for the post of Group-D

employment and she secured the employment on the basis of certificate which was not issued by any recognized institution.

6. Incriminating material has come against the writ petitioner during the course of inquiry that the school in question was not affiliated with Punjab Education Board during the year 1973-74 when the petitioner claims to have passed middle class examination. The factum of 'No Objection Certificate' issued by Adarsh High School, Bhatinda could not be proved on record as the said institution was found to be non-existence. Even during the course of argument before this Court, a fair opportunity was given to learned counsel for the petitioner to submit original certificate of middle class examination and also 'No Objection Certificate' issued by the institution when the petitioner was studying in 9th class. On both the counts, learned counsel for the petitioner showed his inability to produce such document on record of the case.

7. The issue of recruitment in service on the basis of false information/certificate has to be carved with strong hands as it spoils the basic fabric of service jurisprudence. The person having secured appointment by fraudulent means has no sympathy in law. Such appointment besides being *void ab initio* vitiates all solemn acts and such appointee can be thrown out of service at any stage of the service career.

8. In view of law laid down in cases **District Collector, Vizianagaram Vs. M. Tripursundari Devi, 1990 (4) SLR 237,**

1994 AIR (SC) 853, S.P. Changalvaraya Naidu (dead) by LRs.
Vs. Jagannath (dead) by LRs., 2003 (2) RCR (Rent) 148,
Balwant Rai Tayal Vs. M/s Subhash Oil Company, Hisar
through Shri Raghunath Sahai, 2006 (7) SCC 416, Hamza Haji
Vs. State of Kerala and another and 2007 (2) RCR (Civil) 431
A.V. Papayya Sastry and others Vs. Government of A.P. and
others the case of the petitioner cannot be treated sympathetically
 and it can be easily culled out that the petitioner was rightly ousted
 from service.

9. In **S.P. Changalvaraya Naidu (dead) by LRs** case (supra), the Hon'ble Supreme Court held that Act of fraud is nullity and nonest in the eyes of law and has to be treated as nullity by every Court, whether superior or inferior. Even the act of fraud can be challenged in any Court even in collateral proceedings. In **Balwant Rai Tayal's** case (supra), it was propounded that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of litigation.

10. Even finally culminated proceedings can be reopened on detection of fraud. Fraud vitiates all judicial acts and it can be challenged in collateral proceedings as well. Fraud is a conduct of a person either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. An act of fraud is

always viewed seriously. Said act/transaction is *void ab initio*. Fraud and deception are synonymous and vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Fraud unravels everything and vitiates all transactions known to the law of however high a degree of solemnity.

11. In case of probationary or temporary employee, the employment can be discharged or terminated. In case of permanent nature of employment, the misconduct of the employee can be established by way of resorting to the procedure of Rule 14 of CCS (CCA) Rules, 1965 which according to facts and circumstances of the case were duly complied with. The petitioner was given adequate opportunities to prove her case. The scope of judicial review of the disciplinary proceedings is very limited as the Courts cannot sit over the decision of disciplinary authorities which was based on fact finding inquiry. The inquiry has not been proved by the petitioner to be vitiated on account of any violation of principles of natural justice or having suffered with any infraction in law and procedure, nor impugned action of the authority was found to be actuated with any malice or mala fide at the instance of the authority. In the absence of such material ingredients, no procedural irregularity can be presumed which may have entailed in any prejudice to the petitioner.

12. The punishment of removal awarded to the petitioner on detection of fraud cannot be stated to be disproportionate to the misconduct. The employment sought on the basis of fraudulent means cannot be endorsed by any sympathy, nor any tenure of service having rendered by the petitioner can dilute the instinct of fraud which had crept in from the very inception of service. Limitation starts from the date on which the fraud is detected. Even otherwise beneficiary of such fraud has no equity in law. The argument of the petitioner that at the time of appointment, her credentials and antecedent behaviour were duly verified by the Competent Authority cannot be appreciated over and above the findings recorded by the Competent Authority which were based on material on record. Such findings cannot be said to be the result of misreading of any material on record or having suffered with any perversity. There was no infraction of any law and procedure, nor the impugned action was found to be mala fide.

13. In view of aforesaid, we do not find any merit in the writ petition. Accordingly, this writ petition is dismissed being totally bereft of merit.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

February 01, 2016
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