

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

Date of Decision: November 29, 2016

1. R.S.A. No. 2016 of 2015 (O&M)

Punjab State Electricity Board, now Power Corporation Ltd. & Ors

.... Appellants

Vs.

Nirvail Singh, Lineman

... Respondent

2. R.S.A. No. 2017 of 2015 (O&M)

Punjab State Power Corporation Ltd. and others

... Appellants

Versus

Ravail Singh, Lineman

... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajiv Malhotra, Advocate,
for the appellants.

Mr. Gagneshwar Walia, Advocate,
for the respondent(s).

P.B. BAJANTHRI, J. (ORAL)

1. By this common order, both the regular second appeals i.e. RSA Nos. 2016 of 2015 and 2017 of 2015 are being decided together as similar facts are involved in these appeals. However, for brevity, facts have been taken from RSA No.2016 of 2015.

2. The appellants have questioned the validity of the Trial and Appellate Courts orders dated 31.07.2013 and 24.12.2014 respectively.

3. The appellants advertised the post of Lineman in the year 1985.
The method of the recruitment of the said post is by way of direct

recruitment. Prescribed qualification for the post of Lineman is matric and having one year experience as regular/work charged T. Mate.

4. Respondent-Nirvail Singh stated to have worked as T.Mate from 01.09.1983 to 30.11.1984 in the Sub Divisional Office, Sultanwind (Amritsar). Respondent was a candidate for the post of Lineman. He was selected and appointed vide order dated 21.07.1986. The Vigilance Department of PSEB while verifying the experience certificate of the respondent as T. Mate for a period of one year held preliminary enquiry against the respondent. In that enquiry, it was prima facie held that experience certificate of having worked as T.Mate by the respondent was a fake. Thus, the appellant proceeded to initiate disciplinary proceedings under the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 (hereinafter referred to "Regulations 1971") by framing a charge on 11.02.1994. The enquiry officer held that the charges levelled against the respondent were proved. Consequently, show cause notice was issued on 17.02.1997. After receipt of the reply to the show cause notice, the disciplinary authority proceeded to impose penalty of dismissal from service under Regulation 5(iii) of the Regulations 1971. The said order was passed by the Superintending Engineer, who was the competent and appointing authority in so far as the Lineman is concerned. The respondent has not exhausted the remedy of appeal provided under the Regulations 1971. Straightway the respondent got a reference from the Government and raised an industrial dispute before the Labour Court and Reference No. 118 of 1999 was pending consideration before the Labour Court.

5. When things stood thus, Ravail Singh respondent in another case, who was similarly situated person had approached the appellants by making a representation seeking for his reinstatement. The appellants while accepting the representation of Ravail Singh, reinstated him. With reference to the said fact, the respondent in the present case also submitted a representation seeking for his reinstatement at par with Ravail Singh. The appellants while considering the representation of the respondent, imposed certain conditions relating to withdrawal of the case which was pending consideration before the Labour Court. Thus, on 14.09.1999 respondent was reinstated while ordering “after deducting his service benefits for 2 years and two annual increments were stopped with retrospective effect and that he will not claim any benefit or service allowances etc. in lieu of period of which he remained absent or terminated from service.” To that extent he is required to execute a bond in the stamp paper. Thus, the respondent was reinstated into service. Consequently, on 21.09.1999 respondent withdrew the case pending consideration before the Labour Court (Reference No. 118/1999) obtaining liberty to raise the dispute afresh, if so advised. Thereafter, the appellant Board noticed that certain fraud and in collusion with authorities of the Board, respondent had been reinstated by order dated 14.09.1999 (Annexure A/3). Therefore, the appellant-Board took a decision on 12.03.2004 that respondent had obtained appointment by production of bogus/fake experience certificate and there is tampering of the official record which is a grave misconduct on the part of the respondent. Therefore, the Board has directed the competent authority to take a fresh decision while invoking Regulation 32 (iii) of the Regulations 1971. Pursuant to the

directions of the Board, the competent authority i.e. Deputy Chief Engineer issued a show cause notice on 22.07.2008 for taking further action in the matter. After receipt of the reply to the show cause notice dated 22.07.2008, Deputy Chief Engineer proceeded to impose penalty of dismissal (termination) from service on 12.08.2009.

6. The respondent feeling aggrieved by the order of dismissal dated 12.08.2009 filed a suit before the trial Court. The trial Court decreed the suit on 31.07.2013. Feeling aggrieved by the order of the trial Court dated 31.07.2013, the appellants preferred an appeal before the appellate Court. The appellate Court confirmed the order of the trial Court vide order dated 24.12.2014. Thus, the present appeal has been presented by the appellants.

7. Learned counsel for the appellants submitted that while passing the order of re-employment/reinstatement of the respondent herein, the officials of appellant Board have not taken note of fraud committed by the respondent while obtaining the appointment order while producing fake/bogus experience certificate which was subject matter of enquiry, resulted in imposing the penalty of dismissal from service. Merely one Ravail Singh was reinstated on his representation, representation of the respondent has been entertained by the officials of the appellants ignoring the fact that the respondent has played a fraud in obtaining the appointment order. In respect of the fraud played by the respondent is concerned, learned counsel for the appellants relied upon a decision of the Supreme Court in ***Meghmala and others vs. G. Narasimha Reddy and others, (2010) 8***

Supreme Court Cases. Para 28 of the said judgment reads as under:-

“28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay (1956) All. ER. 341 CA), the Court observed without equivocation that "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

8. Learned counsel for the appellants further contended that the Board has power to examine the validity of penalty imposed by the disciplinary authority under Regulation 32 of the Regulations 1971. The same has been examined and the matter referred to the competent authority to pass an order under Regulation 32(iii)(b) and proviso to Regulation 32. Therefore, there is no infirmity in respect of a decision taken by the Board as well as imposition of penalty of termination/dismissal on 12.08.2009.

9. It was further contended that the appellate Court failed to appreciate the conduct of the respondent i.e. production of fake certificate in obtaining the employment. The question of enhancement of penalty is not a subject matter for the reasons that on 22.07.1997, the respondent was dismissed and now the penalty of termination has been imposed on 12.08.2009 which is nothing but a dismissal order, therefore it is only reiterating the penalty which was passed originally on 22.07.1997. The appellate Court exceeding its jurisdiction contending that no enquiry has been held before passing order dated 12.08.2009. Said order is a

consequential order of 22.07.1997. In other words, the Board has exercised the power on 12.03.2004 while examining order 22.07.1997 read with order dated 14.09.1999 (re-employment). Therefore, it is not a fresh penalty imposed on any allegation. The Board has examined earlier issue which was a subject matter in accordance with law. Later on, without power and in collusion, the disciplinary authority has suo moto re-employed the respondent ignoring the fact that there is no modification of dismissal order either by the appellate or reviewing or revisional authority or by any judicial order. Therefore, the appellate Court has committed error interfering with the order dated 12.08.2009.

10. Learned counsel for the appellants further contended that the appellate Court has examined the delay aspect by the appellants with reference to the earlier date of dismissal i.e. 22.07.1997, re-employment on 14.09.1999 and order of termination dated 12.08.2009 and further the respondent has discharged the duties for more than a decade. Therefore, order of termination dated 12.08.2009 is held to be bad and incorrect. In this regard, learned counsel for the appellants relied upon a decision of Supreme Court in ***Khub Ram vs. Dalbir Singh and others, (2015)8 Supreme Court Cases 368***. Para Nos. 5 and 11 read as under:-

“5. On behalf of appellant - Khub Ram, Mr. P.N. Misra, Senior Advocate raised a strong objection that writ petition should not have been allowed in 2010 in view of delay in impleading the appellant as late as in 2004 when he had already earned a promotion on 01.03.1996 and a second promotion as Traffic Manager on 05.05.2000. It was also highlighted that because of interim order of this Court he has continued in service and has been promoted as General

Manager in December 2014. He pointed out that objection was taken to the impleadment application dated 16.02.2004 on grounds of delay as well as promotion already earned by the appellant. In support of the aforesaid plea reliance was placed on judgment of this Court in the case of Jiten Kumar Sahoo v. Mahanadi Coalfields Ltd. (2011) 11 SCC 520 and in Buddhi Nath Chaudhary v. Abahi Kumar (2001) 3 SCC 328.

11. Had the appellant Khub Ram not committed such acts for obtaining selection and appointment, we could have considered the issue of delay as well as judgments supporting such a claim. However, Mr. Patwalia has rightly submitted that delay in impleading the appellant could not weigh with this Court when a case of fraudulent entry into service has been found by the learned Single Judge as well as Division Bench and an attempt has been made by the appellant even to mislead this Court by producing Annexure P-2 and claiming it to be copy of the corrected certificate freshly issued on 06.06.1989. Such conduct of the appellant in our considered view disentitles the appellant – Khub Ram to get any relief under Article 136 of the Constitution of India.”

11. Learned counsel for the appellants has also pointed out that scope of review and invoking Regulation 32 is only for a period of six months has been taken note of by the appellate Court is not correct for the reasons that under Regulation 32 board is required to be examined within a six months, however, power has been exercised by the Board, if there is no appeal order passed by the disciplinary authority can be examined for which there is no limitation under Regulations 1971. To that extent the appellate Court has committed error, therefore, the order of the appellate Court is liable to be set aside.

12. Per contra, learned counsel for the respondent submitted that

based on the representation, the respondent has been reinstated. In the representation, the respondent has contended that one Ravail Singh, who was similarly situated person, was also dismissed from service and he has been re-employed on similar ground is also entitled for re-employment etc. The same has been taken note of by the disciplinary authority and proceeded to pass an order regarding re-employment subject to impose certain conditions like withdrawing the case before the Labour Court etc. After reinstatement, the case before the Labour Court was withdrawn by the respondent. Therefore, the appellants are estopped from invoking regulation 32 while examining the order of dismissal dated 22.07.1997. The respondent was compelled to withdraw the Labour Court case at the behest of the appellants. It was further contended that on 12.08.2009 the appellants have imposed penalty of termination which was one of the major penalty. No enquiry has been held. In the present case, imposition of termination penalty on 12.08.2009 is the double jeopardy as on the earlier occasion respondent was dismissed on 22.07.1999. It was further contended that order of termination is a non-speaking order and it has been passed after more than a decade. During the years 1999 to 2009, the respondent has earned increments and other service benefits, therefore, impugned action is illegal. It was further contended that appellate Court has taken into consideration the fact that:-

- “I) Alleged bogus service has not been brought on record nor proved on file;
- II) While passing impugned order rules and natural justice has not been complied with as no opportunity of being heard was given

to the plaintiff.

- III) That under service rules, in case, major punishment is to be imposed, regular enquiry is to be conducted. But in this case no enquiry was conducted by the defendant board but jump to conclusion by passing impugned order Ex.P5.
- IV) When plaintiff has already been subjected to punishment vide order dated 14.09.1999 vide which his two annual increments were stopped with future interest and his two years service were forfeited, he cannot be subjected to double jeopardy. Service of plaintiff cannot be terminated twice on the same cause of action which amounts to double jeopardy.

Without conducting enquiry no punishment can be imposed and impugned order is not sustainable in the eyes of law. Not only this DW1 Surinder Bajaj circle Superintendent PSPCL in his cross examination state that the plaintiff was again punished on the same allegation vide office order no. 272 dated 12.08.2009 which is Ex.P5. He further admitted that no fresh allegations were leveled against the plaintiff before terminating his service through office order no. 272 dated 12.08.2009. So from the above discussion issue no.1 and 2 is decided in favour of plaintiff and against defendants.”

Having regard to the discussion and finding of the appellate Court, the appellants have not made out a case so far as interference by the order of the appellate Court.

13. Learned counsel for the respondent further contended that order

of dismissal has been passed by the Deputy Chief Engineer whereas the competent authority for Lineman is Chief Engineer.

14 Heard learned counsel for the parties.

15. Perusal of record shows that respondent was dismissed from service on 22.07.1997 after initiating departmental enquiry on the allegation that he is alleged to have produced fake/bogus experience certificate. The respondent has not exhausted the remedy of appeal. He had approached the Government and obtained reference which was the subject matter of Industrial dispute before the Labour Court under Reference No. 118 of 1999 which was pending consideration. Meanwhile, similarly situated like respondent, case was reconsidered by the disciplinary authority. Consequently, representation of the respondent was also entertained and he was also re-employed. The same was taken note of by the Board while invoking power under Regulation 32 a direction was given to the competent authority to pass an order. It is to be noted that order dated 14.09.1999 re-employing the respondent is without authority of law for the reasons that order dated 22.07.1997 vide which the respondent was dismissed from service passed by the disciplinary authority in the absence of any direction from the appellate/reviewing/revisional authority or any judicial order. The disciplinary authority should not have entertained the representation of the respondent merely on the score that one Ravail Singh's case was entertained. If a mistake has been committed by the disciplinary authority the same cannot be extended to another person like the respondent herein. Therefore, the Board proceeded to direct the competent authority to pass an order with reference to Regulation 32. Perusal of Regulation 32, it is evident

that the board has empowered to examine the order of disciplinary authority if there is no appeal preferred against the disciplinary authority's order and so also there is no limitation for examining the order of the disciplinary authority by the Board by suo moto. That apart, having regard to the fact that on 22.07.1997, the respondent was dismissed from service and also while invoking the regulation 32 by the Board, the disciplinary authority directed to pass order and the penalty of termination which is equivalent to dismissal has been ordered. Under the regulations, there is penalty called as termination. The major penalties are compulsory retirement / removal from service / dismissal from service. The respondent admitted that nomenclature of termination is similar to that of dismissal. It should have been dismissal from service. Having regard to the word used in the order dated 22.07.1997 read with order dated 12.08.2009 penalty would be one of the same. Therefore, there is no enhancement of penalty. In other words, the question of holding an enquiry in the manner laid down in regulation 8 as provided in the proviso to Regulation 32 is not at all attracted in the present case. It is not a case of further inquiry. Regulation 32 has rightly been invoked by the Board while referring the order to the disciplinary authority under the said provision. Therefore, there is no lacuna in the order dated 12.08.2009.

16. In respect of playing a fraud by the respondent in obtaining appointment as Lineman by producing fake certificate of one year experience as T. Mate is concerned, the respondent has not produced any material to show that certificate is genuine, before the trial Court or appellate Court. In other words, he has suffered a decision before the enquiring authority which is merged with the order of dismissal dated

22.07.1997. Learned counsel for the respondent submitted that there is an inordinate delay in further action taken by the appellants of about 10 years i.e. order dated 14.09.1999(re-employment) and order of termination dated 12.08.1999. Once the respondent has been reinstated from service, he has been extended service benefits including increments. The Supreme Court in the case of ***Khub Ram (Supra)*** held that delay could not be hurdle where the employee has played a fraud. In respect of the fraud played by a candidate in obtaining employment has been deprecated by the Supreme Court in number of decisions, therefore, delay will not be hurdle for passing the order of dismissal on 12.08.2009. One of the contention raised by the respondent that Deputy Chief Engineer passed the order of dismissal on 12.08.2009 is concerned, it is pointed out by the learned counsel for the appellants that respondent was initially appointed as Lineman by the Superintending Engineer who is subordinate to the Deputy Chief Engineer, therefore, the contention of the respondent that the competent authority has not passed the order of dismissal dated 12.08.2009 is not tenable.

17. The Supreme Court in the following cases discussed the fraud and consequential effects:-

- (a) ***(2015) 10 SCC 400 – Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others.*** Para No. 44 reads as under:-

“44. However on the basis of the evidence on record produced before us, we are unable to concede with the affidavits so released by Respondent No. 2- RDA since the evidence of bias and self-interest is evident. This Court on one occasion, in the case of The State of Punjab and Anr. v. Gurdial Singh and Ors., AIR 1980 SC 319 opined with respect to mala fides in jurisprudence of power, as under:-

“9. The question, then, is what is *mala fides* in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-- is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated:

"I repeat that all power is a trust -- that we are accountable for its exercise --that, from the people, and for the people, all springs, and all must exist".

Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the

statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.”

- (b) **(2014) 15 SCC 715 – Chaman Lal vs. State of Punjab and others.** Para No. 16 reads as under:-

“16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in Basawaraj & Anr. v. The Spl. Land Acquisition Officer, AIR 2014 SC 746 considered this issue and held as under:

" 8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make

functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., (1995) 1 SCC 745, M/s. Anand Buttons Ltd. v. State of Haryana & Ors., 92005) 9 SCC 164; K.K. Bhalla v. State of M.P. & Ors., (2006) 3 SCC 581; and Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455.”

(c) **(2013) 14 SCC 494 – Vikas Pratap Singh Vs. State of Chattisgarh.** Para No. 22 reads as under:-

*“22. The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: *Vizianagaram Social Welfare Residential School Society and another v. M. Tripura Sundari Devi*, (1990) 3 SCC 655, *S.P. Chengalvaraya Naidu v. Jagannath and others*, 1994(1) R.R.R. 253: (1994) 1 SCC 1 and *Union of India and others v. M. Bhaskaran*, 1996(1) S.C.T. 469: 1995 Suppl. (4) SCC 100). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: *Vinodan T. and Ors. v. University of Calicut and Ors.*, 2002 (2) S.C.T. 1046: (2002) 4 SCC 726; *State of U.P. v. Neeraj Awasthi and Ors.*, 2006(1) S.C.T. 203: (2006) 1 SCC 667).”*

(d) **(2013) 7 SCC 685 – Commissioner of Police, New Delhi and Anr vs. Mehar Singh.** Para No. 36 reads as under:-

“36. The Screening Committee’s proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455. It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.”

(e) **(2010) 2 SCC (L&S) 785 – M.P. Patil (Dr.) vs. Gulbarga University and others.** Para Nos. 15 to 18 read as under:-

“15. Once the facts of the case are narrated, there remains

hardly anything to adjudicate upon. The facts of the case lead to only one conclusion that the appellant was wrongly appointed to a post that was reserved for Group B category. The High Court has also found that the appellant's selection for appointment to the post was tainted by the participation of the Head of the Department of Kannada, who was related to him, in the selection process. In those facts and circumstances, all that is needed is to dismiss the appeal without further ado.

16. *But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr. Patil, learned Senior Counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as Lecturer and from where he had resigned to join to this post.*

17. *We are unimpressed. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour.*

18. *The matter can also be looked at from a slightly different angle. It is noted above how the appellant was able to secure the appointment and how he managed to continue on the post. By notification dated 13-08-2004, the appellant was discharged from the service of the University on the post of Reader in Kannada but was asked to continue on ad-hoc basis until the appointment of the new incumbent to the post. His position is, thus, only ad- hoc till the appointment of the new incumbent and in that position he is continuing on the basis of*

the direction of this Court to maintain status quo. We see no reason to continue this ad-hoc arrangement any further and we do not wish to stand any longer in the way of the post being filled up on a regular basis.”

(f) (2016) 6 SCC 532 – Kulwinder Singh vs. State of Punjab and others. Para No. 16 reads as under:-

“16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against de-reserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In State of U.P. And Ors. v. Rajkumar Sharma And Ors. (2006) 3 SCC 330 it was held as under:-

“15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P. (1996) 7 SCC 426; Secy., Jaipur Development Authority v. Daulat Mal Jain(1997) 1 SCC 35; State of Haryana v. Ram Kumar Mann(1997) 3 SCC 321; Faridabad C.T. Scan Centre v. D.G., Health Services (1997) 7 SCC 752; Jalandhar Improvement Trust v. Sampuran Singh (1999) 3 SCC 494; State of Punjab v. Dr. Rajeev Sarwal (1999) 9 SCC 240; Yogesh Kumar v. Govt. of NCT, Delhi (2003) 3 SCC 548; Union of India v. International Trading Co. (2003) 5 SCC 437 and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority (2006) 2 SCC 604.)”

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality.”

18. The above decisions cover the issue related to fraud in obtaining appointment, fraud on statutory provisions and whether candidate has any right to continue in service merely he has worked for more than decade. Admittedly respondent produced fake experience certificate, disciplinary authority without power under statutory provisions re-employed without withdrawing dismissal order dated 22.07.1997, thus action to re-employ respondent is fraud on statutory provisions and obtaining appointment by playing fraud cannot be ignored and continue the service of respondent irrespective of number of years of service rendered.

17. In view of the facts and circumstances, both the appeals i.e. RSA Nos. 2016 and 2017 of 2015 are allowed. Judgments of the trial Court as well as appellate Court are set aside.

November 29, 2016
vkd

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No
