

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19164 of 2014

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Hari Lal Paswan son of Late Panchu Paswan, resident of village- Dafarpur, P.O.-
Dafarpur, P.S.- Bakhari, District- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Bihar, Patna
2. The Principal Secretary, Department of Education, Bihar, Patna
3. The Director, Department of Primary Education, Bihar, Patna
4. The Regional Director of Education, Munger
5. The District Magistrate, Begusarai
6. The District Education Officer, Begusarai
7. The District Programme Officer (Establishment), Begusarai
8. The Block Development Officer, Nawkothe Block, District- Begusarai
9. The Headmaster, Primary School Bagar Block, Nawkothe, District- Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nakul Kumar Jamuar, Advocate
For the Respondent/s : Mr. Ashish Kumar Lal, A.C. to G.A.-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-02-2017

Heard learned counsel for the petitioner and learned counsel
for the State.

2. The present writ application has been filed by the
petitioner for directing the respondents to make payment of one
month's salary of November, 2013 and entire retiral benefits
including pension with up-to-date statutory interest.

3. It is contended by the learned counsel for the petitioner
that the petitioner was appointed as an Assistant Teacher in Primary
School, Makhawa under Bhagwanpur Block in Begusarai District. He
remained posted in the said school till 2003. Thereafter, he was



transferred to Primary Harijan School, Bagar, Nawakothi, Begusarai, where he gave his joining on 05.08.2005. Since then, he worked as an Assistant Teacher in the aforesaid school and ultimately retired from service on 30.11.2013. It is contended that though the petitioner retired on 30th November, 2013, he has not been paid salary for the month of November, 2013 and other retiral benefits including pension. It is further contended that several representations were made to the respondents in this regard, but the respondents are sitting tight over the matter and no action has been taken till date in order to pay the amount of statutory benefits, which the petitioner is entitled to.

4. The matter has been contested by the State. A counter affidavit and a supplementary counter affidavit have been filed on behalf of respondent no.6, wherein it has been stated that the District Education Officer, Begusarai had received a complaint against the petitioner by one person, namely, Hare Ram Yadav son of Late Borahan Yadav, who had stated that the certificates, on which the petitioner was appointed, were forged and fabricated. The District Education Officer, Begusarai, on receipt of complaint on 12th September, 2012, sent a letter to the Block Education Officer-cum-Drawing and Disbursing Officer, Nawakothi on 7th October, 2013 and directed him to submit the petitioner's self attested Educational qualification and Training qualification Certificates for verification. A copy of the aforesaid letter dated 12th September, 2012 was also sent



to the Head Master, Primary School, Bagar and the petitioner of the present case. Thereafter, the Block Education Officer-cum-Drawing and Disbursing Officer, Nawakothi submitted the self attested Certificates of the petitioner to the District Education Officer, Begusarai vide letter dated 19th October, 2013. On receipt of those Certificates (Educational and Training Certificates) of the petitioner, they were sent to the Secretary, Bihar School Examination Board, Patna for verification. It is further stated in the supplementary counter affidavit that the Deputy Secretary (Vigilance), Bihar School Examination Board, Patna verified the certificates of the petitioner and found them to be forged and fabricated. The report of the Deputy Secretary (Vigilance), Bihar School Examination Board, Patna has been brought on record and marked Annexure-B to the supplementary counter affidavit.

5. On perusal of the report, as contained in Annexure-B to the supplementary counter affidavit filed on behalf of respondent no.6, I find that the Deputy Secretary (Vigilance), Bihar School Examination Board, Patna has reported to the District Education Officer, Begusarai that Roll Code No.2331 and Roll No.0147, as mentioned in the Certificate of the petitioner of the Annual Examination, 1972 were not allotted to any candidate. In respect of Teachers Training Examination Certificate of the petitioner, it is stated that Roll Number and Roll Code mentioned in the Certificate



was, as a matter of fact, allotted to a candidate, namely, Dhanichandra Mochi son of Gaya Mochi, Munger Centre.

6. It is apt to mention herein that the statements made in the counter affidavit and the supplementary counter affidavit filed on behalf of respondent no.6 have not been controverted by filing any rejoinder application.

7. While arguing the matter, learned counsel for the petitioner submitted that even if the Certificates were found forged, the petitioner would be entitled to receive salary for the month of November, 2013 and pensionary benefits as no disciplinary proceeding was ever initiated while the petitioner was in service. He submitted that even after retirement no proceeding has been initiated against him under the Bihar Pension Rules, 1950 and, in absence of any disciplinary proceeding or proceeding under the Bihar Pension Rules, 1950, the respondent State would not be justified in forfeiting the pension of the petitioner. He submitted that it is well established principle of law that pension is not bounty rather it is a right to property earned by an employee for past services. It is a valuable right and does not depend on sweet will and pleasure of the Government.

8. Countering the arguments of the learned counsel for the petitioner, learned counsel for the State submitted that once it is established that the petitioner has obtained the job on the strength of forged Certificates by playing fraud upon the authorities, he would not



be entitled either for salary or for pensionary benefits. He submitted that since the appointment of the petitioner was itself *non est* in the eye of law, no statutory rights of salary or consequential entitlement of pension and other monetary benefits would arise in favour of the petitioner. He submitted that fraud vitiates every solemn act. In support of his argument, he placed reliance of a Full Bench Judgment of this Court in ***Rita Mishra and Others vs. Director, Primary Education, Bihar and Others*** since reported in ***1987 PLJR 1090***.

9. I have heard learned counsel for the parties and perused the record.

10. I find substance in the arguments advanced by the learned counsel for the State.

11. It is true that the petitioner was allowed to work for more than three decades and was also paid salary during the said period except for the month of November, 2013. However, at the fag end of his service a complaint was received from one Hare Ram Yadav that appointment was taken by the petitioner on the basis of forged Certificates. The complaint was made on affidavit and, hence, the District Education Officer got the matter enquired. The Educational Qualification Certificates of the petitioner were sent to the Bihar School Examination Board, Patna for verification. The report of the Bihar School Examination Board, Patna, as contained in Annexure-B to the supplementary counter affidavit, would make



evident that the Matriculation Certificate and the Teachers' Training Certificate of the petitioner were forged and fabricated. The roll number and the roll code mentioned in the Matriculation Certificate of the petitioner were not allotted to any candidate for that particular year. Similarly, the roll number and the roll code mentioned in the Teachers' Training Certificate of the petitioner were allotted to another candidate namely, Dhanichandra Mochi son of Gaya Mochi.

12. The aforesaid contention of the respondent State has not been controverted by the petitioner. On the other hand, the contention of the petitioner is that even if the Certificates are forged, the petitioner would be entitled to receive pension because no proceeding was initiated against him and the guilt of the petitioner has not been proved so far.

13. In *Rita Mishra (supra)*, a Full Bench of this Court, while deciding about entitlement of right to salary and pension in case of appointment having been obtained on forged letter of appointment, has laid down the following proposition:-

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is *non est* in



the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.

14. In this context it is, perhaps, equally well to recall that forgery is a serious public crime in the Indian law from the very beginning, and, in particular, since the enforcement of the Indian Penal Code , 1860, for now more than a century and a quarter. Chapter XVIII of the said Code deals with crimes of this nature. Both forgery under Section 463 and the making of a false document under Section 464 are couched in the widest terms. Equally well it is to recall the earlier definition of 'valuable security' in Section 30 of the said Code. This wide ranging definition denoting it, (which is important for our purpose) as a document, whereby any legal right is created, extended, transferred, extinguished or relinquished is again framed so broadly that a letter of appointment creating a legal right to the post would come within its ambit. How gravely the law disfavours the serious aspects of the crime is manifest from the fact that more grievous forms of forgery under Sections 467, 474 and 475 are made punishable with imprisonment for life. Once that is so, could it possibly be said that a person who is guilty of a crime of this



nature and is liable to punishment therefor, can, nevertheless, come in the writ jurisdiction and claim the right to salary on the basis of a document which steepens him in serious guilt? The answer must obviously be rendered in the negative.

15. To sum up on this aspect it seems somewhat plain that where the letter of appointment is a forgery and the appointee is a party and privy to the same, no substantive right of salary would arise, however, long the person may have fraudulently worked on the post in actuality. To my mind, no legal right can stem from a crime herein because of the original factum of forgery. Such a person is not an employee at all and far from being a public servant in the eye of law. Even if on the basis of a forged letter he has imposed himself on the post and worked thereon, he cannot take advantage of his own wrong because he would not have worked lawfully thereon. Even in a suit under Section 70 of the Contract Act the requirement is that the claimant had lawfully done something not intending to do it gratuitously and in the absence of such lawfulness even in that forum the plaintiff might well be defeated. That being so the legal position in the case of a forged appointment letter, to which the appointee is himself a party and privy, is clear and categorical and no substantive right to salary whatsoever



can accrue therefrom, far from the same being claimable by way of *mandamus* in the writ jurisdiction.” (emphasis mine)

14. The Hon’ble Supreme Court examined the issue of law relating to effect of fraud upon the authority to get an appointment in *Meghmala and Others vs. G. Narasimha Reddy and Others* since reported in [(2010)8 SCC 383] and laid down the following proposition:-

“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 v. Jagannath* AIR 1994 SC 853). In *Lazarus Estate Ltd. v. Besalay*, (1956) 1 All ER 341(CA), the Court observed without equivocation that (QB p.712) "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”.

29. In *A.P. State Financial Corpn. v. GAR Re-Rolling Mills & Anr.* AIR 1994 SC 2151; and *State of Maharashtra & Ors. Vs. Prabhu* (1994) 2 SCC 481 this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by



promotion of good faith. "Equity is always known to defend the law from the crafty evasions and subtleties invented to evade law.

30. In *Shrisht Dhawan v. Shaw Brothers*, AIR 1992 SC 1555, it has been held as under:-

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

31. In *United India Insurance Co. Ltd. v. Rajendra Singh & Ors.* AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655, *Union of India v. M. Bhaskaran* 1995 Supp (4) SCC 100, *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* (2004) 6 SCC 325, *State of Maharashtra v. Ravi Prakash Babulalsing Parmar* (2007) 1 SCC 80, *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company* AIR 2007 SC 2798



and Mohd. Ibrahim v. State of Bihar (2009) 8 SCC 751.

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. [*Vide. Vimla(Dr.), v. Delhi Adm. AIR 1963 SC 1572, Indian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550, State of A.P. v. T. Suryachandra Rao, AIR 2005 SC 3110, K.D. Sharma v. SAIL (2008) 12 SCC 481 and Central Bank of India v. Madhulika Guruprasad Dahir (2008) 13 SCC 170*).

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i)



knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide *S.P. Changalvaraya Naidu* (1994) 1 SCC 1, *Gowrishankar v. Joshi Amba Shankar Family Trust*, AIR 1996 SC 2202, *Ram Chandra Singh v. Savitri Devi* (2003) 8 SCC 319, *Roshan Deen v. Preeti Lal* AIR 2002 SC 33, *Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education* AIR 2003 SC 4268 and *Ashok Leyland Ltd. v. State of T. N.* AIR 2004 SC 2836).

35. In *Kinch v. Walcott*, 1929 AC 482, it has been held that "....mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own



order obtained by fraud as the order so obtained is non est.” (emphasis mine)

15. In *Ram Chandra Singh vs. Savitri Devi and Others* since reported in [(2003) 8 SCC 319], the Hon’ble Supreme Court observed that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.

16. In *Regional Manager, Central Bank of India vs. Madhulika Guruprasad Dahir and Others* since reported in [(2008)13 SCC 170], the Hon’ble Supreme Court observed as under:-

“14. Similarly, the plea regarding rendering of services for a long period has been considered and rejected in a series of decisions of this Court and we deem it unnecessary to launch an exhaustive dissertation on principles in this context. It would suffice to state that except in a few decisions, where the admission/appointment was not cancelled because of peculiar factual matrix obtaining therein, the consensus of judicial opinion is that equity, sympathy or generosity has no place where the original appointment rests on a false caste certificate. A person who enters the service by producing a false caste certificate and obtains appointment to the post meant for a Scheduled Caste or Scheduled Tribe or OBC, as the case may be, deprives a genuine candidate falling in either of



the said categories, of appointment to that post, and does not deserve any sympathy or indulgence of this Court. He who comes to the Court with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour.” (emphasis mine)

17. Having seen the aforestated decisions of the Full Bench of this Court and of the Hon’ble Supreme Court, the following propositions emerge.

- (i) The statutory rights to salary, pension and other service benefits in public service emanates from a valid and legal appointment to the post;
- (ii) Where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in law;
- (iii) Once it is found that the very appointment is illegal and non est in the eye of law, no statutory entitlement for salary or consequential rights of pension or other monetary benefits can arise;
- (iv) Fraud and justice never dwell together. Fraud vitiates even the most solemn proceedings. Dishonesty should not be permitted to bear the fruit and benefit to the person, who played fraud or made misrepresentation and the court should not perpetuate the fraud;
- (v) Even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken



away;

(vi) Suppression of any material/document amounts to a fraud on the court;

(vii) Equity, sympathy or generosity has no place where the appointment rests on false, forged or fabricated certificate;

(viii) He, who comes to the court with a claim based on falsity and deception cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour.

18. Having considered the case of the petitioner in the light of the aforesaid legal position, in my considered opinion, the petitioner, who had obtained service on the basis of forged Matriculation Certificate and Teachers' Training Certificate, is not entitled to any relief prayed for in the present application, as the very appointment of the petitioner was *non est* in the eye of law. Similarly because he rendered service as an Assistant Teacher in a Government school for a long period, he does not deserve any sympathy or indulgence of this Court.

19. In the considered opinion of this Court, simply because no proceeding was initiated against the petitioner, while he was in service or under the Pension Rules after retirement, no relief can be granted to him, as he has not disputed the authenticity of the report submitted by the Bihar School Examination Board in



respect of his Matriculation Certificate and Teachers’ Training Certificate. In the opinion of this Court, the petitioner cannot plead innocence in the matter, as he himself was the beneficiary of the aforestated forged Certificates.

20. On the factual matrix, I am, therefore, convinced that no equitable relief can be granted to the petitioner.

21. In such view of the matter, the writ application stands dismissed. No costs.

(Ashwani Kumar Singh, J)

Md.S./-

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