

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1179 of 2015
IN
Civil Writ Jurisdiction Case No. 18053 of 2012**

=====

Kumari Shakuntala Sah, Wife of Ram Baboo Sah and D/o Musaheb Sah resident of
Village - Barheta, P.O.- Barheta, P.S.- Kalyanpur, District - Samastipur (Bihar).

.... Petitioner / Appellant

Versus

1. The State of Bihar through the Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
2. The District Magistrate-cum-Chairman, Bihar Shiksha Pariyojna, Samastipur, District- Samastipur (Bihar)
3. The District Teacher Employment Appellate Authority Samastipur, District - Samastipur (Bihar).
4. The District Education Superintendent, Samastipur, District- Samastipur (Bihar).
5. The Block Development Officer Kalyanpur, Samastipur, District- Samastipur (Bihar).
6. The Block Education Officer Kalyanpur, Samastipur, District - Samastipur (Bihar).
7. The Mukhiya, Gram Panchayat Raj Barheta, Kalyanpur, District- Samastipur (Bihar).
8. The Panchayat Secretary Gram Panchayat Raj Barheta, Kalyanpur, District- Samastipur (Bihar).
9. Sandhya Kumari, Daughter of Sri Rajenshwar Rai, resident of Village- Janardanpur, P.S.- Kalyanpur, District - Samastipur (Bihar).

.... Respondents

=====

Appearance:

For the Appellant/s : Mr. Ranjan Kumar, Advocate.
For the Respondent/s : Mr. S.K. Sharma, G.A. 1.

=====

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 08-08-2017

Heard counsel for the appellant and counsel for the State.

Since the Writ Application of the appellant was dismissed
by the learned Single Judge on 01.04.2015 refusing to interfere with
the impugned order dated 21.08.2012 passed by the District Teachers



Employment Appellate Authority in Appeal No. 1538 of 2011, the present appeal has been preferred.

It is evident from perusal of the record that the appellant has fought many rounds of litigation earlier without much success. A detailed consideration was made by the District Teachers Employment Appellate Authority in its order after remand by the learned Single Judge in a previous Writ Application, a copy of which is Annexure-9, and there is a finding of cutting, over-writing, interpolation to facilitate accommodation of the present appellant and defeat the right of a more meritorious candidate.

The above fact, on challenge, has also been considered by the learned Single Judge in wider detail where every facet of the entire process of such selection has been gone into by the learned Single Judge. Therefore, to avoid repetition facts are not required to be noted again. However, the finding of the learned Single Judge, summarized in some of the paragraphs reproduced below, culls out the essence of the entire adjudication.

“These findings of fact recorded by the Tribunal can never be called to be either perverse or irrelevant. Reliance placed by the learned counsel for the petitioner on the U.P.C enclosed as Annexure-2 is also wholly misplaced, inasmuch as, it has gone to show that on 07.11.2006, 24 persons were allegedly sent notice to appear in counseling on 10.11.2006. Thus with 2 clear



days, the notice of counseling allegedly sent even before the publication of the merit list fixed for 15.11.2006, would raise a lot of question mark as with regard to the whole story introduced by the petitioner for justifying her appointment on the post of Panchayat Teacher by excluding much more meritorious candidate like respondent no. 9.

In view of the aforementioned admitted fact that respondent no. 9 was better candidate on merits as against the petitioner and that the order of Block Development Officer, Kalyanpur dated 23.11.2007 did not suffer from any factual infirmity, this Court would not be now inclined to interfere with the aforementioned order of the Block Development Officer, Kalyanpur dated 23.11.2007, specially when the same has not been assailed before this Court in the present writ application, wherein, only order of Tribunal dated 21.08.2012, has been called in question. The plea of violation of the principles of natural justice in the order of Block Development Officer, Kalyanpur dated 23.11.2007, can now cannot be made a ground specially when that order was earlier not interfered by this Court and the petitioner was only given liberty to move the Tribunal on two occasions in her two writ petitions.

As a matter of fact, once this aspect becomes clear that there were interpolation in the records of the Tribunal and favour was bestowed on the petitioner by making her appointment by the then mukhia, will itself take away the requirement of fulfillment of the principles of



natural justice. Law in this regard is well settled that if the appointment itself is obtained by playing fraud, no right can be claimed on the basis of such appointment much less adherence to the principles of natural justice. Reference in this connection may be usefully made to the judgment of the Full Bench of this Court in the case of **Rita Mishra Vs. State of Bihar & Ors.** reported in **1987 BBCJ 701** which has been also approved by the Apex Court in the case of **R. Vishwanatha Pillai Vs. State of Kerala & Ors.** reported in **2004(2) SCC 105** wherein it was held that:-

“15. ----- Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article



311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In *Ishwar Dayal Sah v. State of Bihar* the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no



constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

“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 the 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.”

18. We agree with the view taken by the Patna High Court in the aforesaid cases.

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste,



thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.

(underlining for emphasis)”

The facts being what they are, the conclusion reached both by the Tribunal and the learned Single Judge cannot be said to be erroneous in any manner.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.08.2017
Transmission Date	N/A

