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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of Decision: 08.05.2017**

% **W.P.(C) 1307/2017**

**INDIAN COUNCIL OF AGRICULTURAL RESEARCH**

..... Petitioner

Through: Mr. S.S. Lingwal, Adv.

versus

**HARIDEV PRASAD**

..... Respondent

Through: Mr. H.P. Chakravarti and Mr. P.S. Khare, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**VIPIN SANGHI, J. (ORAL)**

1. Counsel for the respondent has appeared and advanced his submissions. We have heard the submissions of both the learned counsels and, therefore, proceed to judgment.

2. The petitioner has preferred the present writ petition to assail the order dated 26.07.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA 1476/2015. The said OA preferred by the respondent was allowed by the tribunal. The tribunal quashed the charge sheet dated 24.11.2014 and the departmental proceedings in pursuance thereof.

3. The respondent was appointed as SSG-I in the National Bureau of Plant Genetic Resources, New Delhi (NBPGR) with effect from 01.10.1982. On 12.10.1982, he submitted an attestation form for verification of his character and antecedents. In column 10 of the attestation form - relating to his educational qualification, the respondent mentioned that he had passed 10<sup>th</sup> class examination from High School Bakhri Doa, Distt. Mujaffarpur, Bihar in the year 1970. The date of his entrance in the said school was indicated as 05.01.1967, and the date of his leaving the school was indicated as 13.12.1970.

4. Subsequently, the respondent also submitted to his employer a certificate dated 07.01.1993 – purportedly issued by the said school containing marks allegedly obtained by him in the 10<sup>th</sup> class examination. The same was submitted by the respondent with his letter dated 10.08.1993.

5. On the premise that the he had cleared his 10<sup>th</sup> class examination, the respondent sought consideration of his case for promotion to the post of T-1 (Technician). However, his initial claim for promotion was not acceded to on account of non availability of vacancy in January 1994. However, on 05.02.1994, the respondent was promoted to the post of SS-II in NBPGR. In December 1994, the respondent sought further promotion to the post of T-1 (Fieldsman), again on the premise that he had the requisite qualification of high school pass.

6. On 18.02.1995, the respondent once again submitted his 10<sup>th</sup> class mark sheet dated 07.01.1993 issued by the said high school. As it transpires, this mark sheet was different from the one submitted earlier by the

respondent with his letter dated 10.08.1993. The respondent was promoted to the post of T-1 on 08.10.1999 on the recommendation of the assessment committee, and he was further promoted to the post of T-2 on 08.04.2005.

7. On 19.11.2012, a complaint was received from one Sh. Rakesh Choudhary, a public activist alleging that the appointment and promotion granted to the respondent were done on the basis of fake certificate of the high school. It appears that the petitioner sought to verify the genuineness of the certificate produced by the respondent, and in that respect addressed a letter dated 11.04.2013 to the Principal, Govt. Higher Secondary School, Bakhir Doa, Vaishali, Bihar. No reply was received from the school and reminders were sent on 30.05.2013, 07.08.2013 and 26.09.2013. Before any reply could be received, the respondent superannuated on 28.02.2014. The Central Vigilance Commission vide letter dated 04.03.2014 forwarded the complaint against the respondent, and directed the petitioner to submit a factual report on the same. The petitioner continued with its effort to unearth the truth. The District Magistrate, Vaishali was requested vide letter dated 12.03.2014 to make a report on the issue, so as to initiate appropriate action, but to no avail.

8. The vigilance wing of the petitioner forwarded the complaint in respect of the respondent to NBPGR vide letter dated 01.05.2014 for investigation and report. The NBPGR deputed an officer in charge at its Exploration Base Centre, Ranchi to visit the said school for verifying the genuineness of the mark sheet of the respondent. It was only on 13.06.2014, that the senior scientist and officer in charge of NBPGR, Regional Centre – Dr. R.S. Rathi informed that the verification of the 10<sup>th</sup> class mark sheet

dated 07.01.1993 of the respondent was carried out on 11/12.06.2014. He forwarded the letter dated 12.06.2014 issued by the principal in charge of the said school, which stated that the name of the respondent is not mentioned/ entered in the admission register and the attendance register of the said school. Thus, it was only in June 2014 that the petitioner was able to verify the fraud claimed to have been perpetrated by the respondent. Consequently, the petitioner initiated major penalty proceedings against the respondent under Rule 9 of the CCS (Pension) Rules, 1972 (Rules) vide memorandum dated 24.11.2014.

9. After the respondent submitted his defence on 26.12.2014, an inquiry officer was appointed and an order PP No.073/13-14 dated 28.03.2014 was issued withholding the amount of Rs.50,000/-. The respondent then assailed the said recovery made from him by preferring the aforesaid OA. The reliefs sought read as follows:

*“8.1 to allow the OA and quash the impugned Sanction Order & Memorandum of charge dated 24.11.2014 with all consequential benefits and consequently direct the respondents to refund the sum of Rs.50,000/- withheld from his retirement benefits with interest @ 18% p.a. from 01.09.2014 compounded yearly; and*

*8.2 to pass any other or further order or direction which the Hon'ble Tribunal deem fit and proper may also be granted to the petitioner with the exemplary cost to the tune of Rs.50,000/- beside expenses incurred in the present litigation, there being gross violation statutory rules and harassment of the petitioner upto maximum extent”.*

10. It appears that before the tribunal, the respondent raised several grounds to press the reliefs sought by him.

11. The tribunal has allowed the said OA by holding that the initiation of the departmental proceedings against the respondent was barred by limitation as prescribed in Rule 9 (2)(b) of the Rules. Other aspects raised by the respondent have, however, not been adjudicated upon in the impugned order.

12. Since the argument of the respondent which has been accepted by the Tribunal was premised on Rule 9(2)(b) of the Rules, insofar as it is relevant, Rule 9 is set out below:

*“9. Right of President to withhold or withdraw pension*

*<sup>1</sup>[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, **in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :***

*Provided that the Union Public Service Commission shall be consulted before any final orders are passed :*

*Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]*

*(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be*

*continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :*

*Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.*

***(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -***

*i) shall not be instituted save with the sanction of the President,*

***ii) shall not be in respect of any event which took place more than four years before such institution, and***

*iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service". (emphasis supplied)*

13. The tribunal, in the impugned order, has observed that the event which took place more than four years before the institution of the departmental proceedings could not form the subject matter of an inquiry, post retirement, of the government servant. The tribunal placed reliance on ***Rajinder Singh v. Delhi Transport Corporation & Ors.*** in W.P. (C) No. 2744/2011 decided on 03.01.2012 to hold that the event, namely, the submission of the false educational certificate by the respondent took place well over four years prior to the initiation of the inquiry after the respondent's retirement and, thus, the said departmental proceeding was time barred.

14. The submission of learned counsel for the petitioner is that the tribunal has fallen in grave error in the facts of the present case. The respondent was guilty of submitting false and fabricated 10<sup>th</sup> class mark sheets, and on that basis got repeated promotions. The fact that the respondent had submitted fabricated educational certificate was first brought to light by the complainant vide complaint dated 19.11.2012. Repeated endeavours to verify the veracity of the said complaint – while the respondent was in service, did not yield results since there was no response to four communications addressed by the petitioner to the said school. In the meantime, the respondent superannuated. The matter was pursued, inter alia, by the CVC. It was only when an officer of the NBPGR was deputed to visit the said high school, that the school responded vide letter dated 12.06.2014 confirming that the respondent had not been enrolled at the said school, and had not attended the said school during the period claimed by him. Learned counsel submits that the fraud played by the respondent was discovered only after his superannuation and, consequently, the limitation prescribed in Rule 9(2)(b) could not be invoked by the respondent, as a person who is guilty of fraud cannot take advantage of his own fraud.

15. Learned counsel has sought to place reliance on the decision of the Supreme Court in *Devendra Kumar v. State of Uttarakhand & Ors.*, (2013) 9 SCC 363. He submits that fraud unravels all. Learned counsel further submits that the Tribunal invoked and applied the decision in *Rajinder Singh* (supra), without appreciating the different factual context in which the said decision was rendered.

16. On the other hand, the submission of learned counsel for the

respondent is that the tribunal has correctly applied ***Rajinder Singh*** (supra). He submits that the event which constitutes the misconduct is the alleged submission of the forged educational certificate by the respondent, which took place well over four years before the date of his superannuation. The charge sheet was issued only after the superannuation of the respondent. Learned counsel also seeks to place reliance on ***Punjab State Power Corporation Ltd., Patiala & Ors. v. Atma Singh Grewal***, (2014) 13 SCC 666.

17. Having heard learned counsels for the parties, we are of the view that the impugned order is laconic and cannot be sustained.

18. Rule 9(2)(b) of the CCS Pension Rules, inter alia, provides that the departmental proceedings, if not instituted while the government servant was in service, whether before his retirement, or during his re-employment, shall not be in respect of any ‘event’ which took place more than four years before such institution.

19. The question that arises for our consideration is, as to the meaning to be ascribed to the words, ‘*any event which took place more than four years before such institution*’. In the factual matrix of the present case, could it be said that the, ‘event’ is merely the submission of the false educational qualification certificates, which took place more than four years before the institution of the departmental proceedings? Or could the ‘event’ be said to have continued to take place till the time the fraud perpetrated by the respondent in submitting a false educational qualification certificate came to light after the respondent’s superannuation?

20. Departmental proceedings against a government servant are in respect of an alleged misconduct. Rule 9(1) uses the expression, “.....*the pensioner is found guilty of grave misconduct or negligence during the period of service.....*”. However, in contradistinction Rule 9(2)(b) uses the expression, “*in respect of any event which took place more than four years before such institution.*” In our view, the use of the expression, ‘event’ and not ‘misconduct’ in Rule 9(2)(b)(ii) is with a purpose. The ‘event’ of submission of false educational certificates is one thing, but its suppression – and on that basis, the act of securing and enjoying a higher position is also an event of misconduct, which continues on each day the government servant unduly exploits and benefits from such a fraud. The question of initiation of departmental proceedings against a government servant would arise only when the misconduct or the act/omission leading to negligence comes to light and, obviously, such departmental proceedings would not be initiated without definite knowledge and information of the misconduct or act/omission of negligence which may be actionable under the conduct rules.

21. In this light, the expression ‘event’ uses in Rule 9(2)(b)(ii) would be broad enough to not only include the ‘event’ which constitutes the primary misconduct or negligence alleged against government servant, but also the discovery of the misconduct or negligence at a later date.

22. The adoption of a narrow view that the ‘event’ took place more than four years before the institution of the departmental proceedings in a case like the present, where the misconduct came to light only after the superannuation of the government servant would, in our view, tantamount to

putting premium on dishonesty of the government servant. It would mean that a government servant, who has played a fraud by submitting a false educational qualification certificate to secure employment/ promotions, and also managed to keep his fraud under the wraps, would be allowed to get away with his misconduct, as opposed to a person who may play a similar fraud, but whose fraud has been unravelled either while he was in service or even if he has superannuated – within four years of the commission of the fraud/misconduct.

23. Even though, the said provision is not per se attracted, we may also refer to Article 4 of the Schedule to the Limitation Act which prescribes the period of limitation in respect of '*suits by principals against agents for neglect or misconduct*' as three years and the time from which period begins to run is '*when the neglect or misconduct becomes known to the plaintiff*'. Thus, the starting point of limitation is only when the neglect or misconduct becomes known to the person or authority who is in a position to take remedial action in respect of neglect or misconduct of an Agent or servant.

24. In **Devendra Kumar** (supra), the appellant responded to an advertisement inviting applications for the post of Constables in the State of Uttarakhand. He cleared all the hurdles and was sent for training. At that stage, he was asked to disclose on an affidavit that he had not been involved in any criminal case. He filed an affidavit that he had never been involved in any criminal case. After he completed his training satisfactorily, the authorities upon character verification learnt that the appellant was involved in a criminal case. The final report had been submitted by the prosecution and accepted by the Judicial Magistrate concerned in the said criminal case.

Consequently, the appellant was abruptly discharged on the ground that he was a temporary Government servant and he could be removed from service without holding any inquiry. His writ petition was dismissed by the High Court, and the Division Bench upheld the order of the learned Single Judge. The Supreme Court dismissed the appeal of the appellant.

25. The Supreme Court held that the question is not whether the applicant is suitable for the post. The pendency of the criminal case/ proceeding is different from suppression of information of such pendency. The case pending against the candidate might not involve moral turpitude, but suppression of this information itself amounts to moral turpitude. If the information sought by the employer is not correctly disclosed, the same definitely amounts to suppression of material information, and in that eventuality, the service becomes liable to be terminated even if there had been no further trial, or the person concerned stood acquitted/ discharged. In paragraphs 13, 15, 16, 17, 19, 20 & 25, the Supreme Court observed:

*“13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. “Fraud avoids all judicial acts, ecclesiastical or temporal.” (Vide S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1 : AIR 1994 SC 853] .) In Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 2 WLR 502 : (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, for fraud unravels everything.”*

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15. In *Shrisht Dhawan v. Shaw Bros.* [(1992) 1 SCC 534 : AIR 1992 SC 1555] , it has been held as under: (SCC p. 553, para 20)

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

16. In *United India Insurance Co. Ltd. v. Rajendra Singh* [(2000) 3 SCC 581 : 2000 SCC (Cri) 726 : 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 not lost temper over all these centuries. A similar view has been reiterated by this Court in *M.P. Mittal v. State of Haryana* [(1984) 4 SCC 371 : AIR 1984 SC 1888] .

17. In *Ram Chandra Singh v. Savitri Devi* [(2003) 8 SCC 319] this Court held that “misrepresentation itself amounts to fraud”, and further held: (SCC p. 327, para 18)

*“18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.”*

The said judgment was reconsidered and approved by this Court in *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* [(2004) 6 SCC 325 : 2005 SCC (L&S) 785] .

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19. In *Delhi Admn. v. Sushil Kumar* [(1996) 11 SCC 605 : 1997 SCC (L&S) 492] this Court examined a similar case where the

*appointment was refused on the post of Police Constable and the Court observed as under: (SCC p. 606, para 3)*

*“3. ... It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service.”*

*(emphasis supplied)*

*20. In Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav [(2003) 3 SCC 437 : 2003 SCC (L&S) 306 : AIR 2003 SC 1709] and A.P. Public Service Commission v. Koneti Venkateswarulu [(2005) 7 SCC 177 : 2005 SCC (L&S) 924] this Court examined a similar case, wherein, employment had been obtained by suppressing a material fact at the time of appointment. The Court rejected the plea taken by the employee that the form was printed in English and he did not know the*

language, and therefore, could not understand what information was sought. This Court held that as he did not furnish the information correctly at the time of filling up the form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. “The requirement of filling Columns 12 and 13 of the attestation form” was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the attestation form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service.

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25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* — a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (*Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592 : AIR 1996 SC 1340]* and *Lily Thomas v. Union of India [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056]* .) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*).”

26. The Supreme Court also commented on the approach of a Court exercising equitable jurisdiction, where one of the parties is involved in a fraud. In paragraphs 14 & 18, the Supreme Court observed:

“14. In *A.P. State Financial Corpn. v. GAR Re-Rolling Mills [(1994) 2 SCC 647 : AIR 1994 SC 2151]* and *State of Maharashtra v. Prabhu [(1994) 2 SCC 481 : 1994 SCC (L&S)*

676 : (1994) 27 ATC 116] this Court has observed that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. “Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.”

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18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In *Union of India v. M. Bhaskaran* [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94 : AIR 1996 SC 686] this Court, after placing reliance upon and approving its earlier judgment in *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766], observed as under: (*M. Bhaskaran case* [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94 : AIR 1996 SC 686], SCC p. 104, para 6)

*If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer.”*

27. The ratio of the decision in **Devendra Kumar** (supra) is attracted in the facts of the present case. Rule 9(2)(b)(ii) could not have come to the aid of the respondents when the fraud played by him was discovered after his superannuation. Fraud unravels all and would be actionable whenever it is discovered. It is discovery which gives a cause of action to the aggrieved party, and not merely its perpetration.

28. So far as the decision of the Division Bench in ***Rajinder Singh*** (supra) is concerned, a perusal of the said decision shows that the facts of the said case were materially different. In that, the petitioner was appointed as a Security Guard with the DTC in November 1974; got promotion as Hawaldar in February 1983; got further promotion as Assistant Security Inspector in June 1986; retired on superannuation on 31.07.2009; received gratuity and other retiral benefits in September 2009, and; was chargesheeted on 23.02.2010 asking him to explain why proceedings should not be initiated against him under the CCS (Pension) Rules for producing forged educational documents at the time of his promotion. The material difference in the facts of the present case with the facts in ***Rajinder Singh*** (supra) is that four days before the Rajinder Singh's superannuation, on inquiry made from the Board of Higher Secondary Education, UP, the employer/ DTC had derived definite information that the certificate produced by him was not genuine. In spite of getting the said information, Rajinder Singh was not suspended; he was allowed to retire on superannuation on 31.07.2009; and he was paid his gratuity and other retiral benefits in September 2009. Pertinently, in ***Rajinder Singh*** (supra), the Tribunal had declared the promotions earned by the petitioner – on the basis of the forged educational qualification certificates, to be nullity and directed that the petitioner be treated as retired from the post of Hawaldar – for which High School Examination Certificate was not relevant. The Division Bench in ***Rajinder Singh*** (supra) upheld the said direction issued by the Tribunal in the following words:

*“6. There are two aspects of the matter which are quite distinctive. One pertains to promotion of the petitioner as ASI.*

*The Tribunal has itself declared the same as nullity directing that the petitioner be treated retired from the post of Havaladar. In this behalf, the approach of the Tribunal is justified and does not call for any interference and in fact this part of the direction was not challenged at the time of arguments. The Tribunal has referred to the judgments of the Supreme Court in the following cases:-*

- (i) Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and others, (2008) 13 SCC 170;*
- (ii) A.P. Public Service Commissioner Vs. Koneti Venkateswarulu and other, (2005) 7 SCC 177; and*
- (iii) Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and others, JT 2008 (9) SC 445.*

*7. In all these cases, it is held by the Supreme Court that when the appointment is obtained by fraud, even if the incumbent had worked for number of years that would not be a mitigating circumstance and such an appointment which is null and void can always be terminated. In Madhulika's case, the appellant was appointed to the post of Clerk w.e.f. 18th March, 1981 against a post reserved for ST category on the strength of a caste certificate issued on 4th December 1979. The Government of India issued instructions on 23rd March, 1992 to all the Public Sector Undertakings to verify the caste certificates. The Scrutiny Committee set up by the Bank initiated inquiries and in the case of the respondent, it was found that the respondent did not belong to ST category and had obtained false certificate. The services were terminated on this ground. The Supreme Court while upholding the action of the employer rejected the plea of rendering service for a long period observing that equity, sympathy or generosity had no place where the original appointment rests on a false caste certificate and such person did not deserve any indulgence of the Court. It was also held that fraud was anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine.*

8. Similarly in *Raju Ramsingh Vasave (supra)* the first respondent had got appointment claiming that he belonged to ST Category which appeared to be wrong as the ST category certificate given to him was cancelled. The action was upheld on the same principle namely fraud vitiates all solemn acts, even the principles of natural justice are not required to be complied with for setting aside the same.

9. The Tribunal in this behalf has rightly remarked that promotion obtained on the basis of false education certificate is to be treated as nonest and could be set aside at any time. The petitioner could not enjoy the promotion obtained fraudulently.

10. Therefore, insofar as cancellation of promotion of the petitioner to the post of ASI and treating him to have retired from the post of Havaladar is concerned, it is justified and the direction of the Tribunal does not call for any interference. In fact, the petitioner did not even questioned the same before us.”

29. While discussing the application of Rule 9(2)(b) of the CCS (Pension) Rules to the facts of ***Rajinder Singh*** (supra), the Division Bench observed:

“13. .... No doubt, the event had occurred 24 years ago, at the same time, the DTC came to know thereof well in time when the petitioner was in the employment. He was to retire on 31st July, 2009. The complaint was received on 11th July, 2008. We do not know as to when the action was taken on the basis of this complaint and matter was referred to the Board of Higher Secondary Examination, U.P. for verification as that date is not available on record. It was well within the knowledge of the DTC that the petitioner is going to retire on 31st July, 2009. Therefore, they have not acted on the said complaint immediately. Even if we presume that it was so done, the DTC got the information from the Board on 27th July, 2009, there were still four days for the petitioner to retire. The DTC should have known the rigors of Rule 9. The departmental proceedings could always be instituted while he was in service. Even for an act which occurred 24 years ago as the DTC got

*the information about the forgery only in the year 2008 and which was verified in July, 2009. Therefore, the DTC should have acted with promptness to serve the chargesheet before the retirement of the petitioner and should have realized that once it is not done and the petitioner is allowed to retire then limitation of four years would become applicable as the event took place more than four years before the institution of the departmental proceedings. The DTC thus allowed this situation to happen for which it is to blame itself. The petitioner has now retired.”*

30. Thus, it is evident that it was in the specific facts of **Rajinder Singh** (supra) that the Division Bench invoked Rule 9(2)(b)(ii).

31. It is also pertinent to note that the Division Bench invoked Rule 9(2)(b) of the CCS (Pension) Rules since it was of the “*opinion that substantial justice has already been done by treating his promotion to the post of ASI as null and void and treating him to have retired from the post of Havaladar. No doubt for such an act, the petitioner should have been punished as well. However, when law of limitation becomes applicable, the action now taken is clearly time barred. In effect, we have no option but to quash the said action*”.

32. Thus, it is abundantly clear that **Rajinder Singh** (supra) was a decision given in the facts which are materially different from the facts of the present case. In fact, in **Rajinder Singh** (supra), the Division Bench recognised that the submission of false educational certificates tantamounts to misconduct.

33. The Tribunal has also not heeded to the advice of the Supreme Court in **A.P. State Financial Corporation** (supra), **State of Maharashtra Vs.**

***Prabhu*** (supra), ***M. Bhaskaran*** (supra) and other decisions taken note of in ***Devendra Kumar*** (supra).

34. Reliance placed on ***Atma Singh Grewal*** (supra) is of no avail.

35. In view of the aforesaid discussion, we set aside the impugned order passed by the Tribunal. Since the other aspects raised by the respondent in the OA have not been addressed in the impugned order, the matter is remanded back to the tribunal for consideration of the other aspects. However, it is made clear that the issue of breach of Rule 9(2)(b) of the Rules stand concluded against the respondent.

36. The parties shall appear before the tribunal on 24.05.2017.

**VIPIN SANGHI, J**

**DEEPA SHARMA, J**

**MAY 08, 2017**

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