

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7726 of 2013

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Meera Kumari W/O Shri Kamla Kant Thakur Resident Of Topkhana Bazar,
Opposite Warehouse, P.S Kotwali, At And District - Munger

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principle Secretary, Department Of Education, Government Of Bihar,
Patna
3. The Director, Primary Education, Government Of Bihar, Patna
4. The District Education Officer, Munger
5. The District Programme Officer, Establishment, Munger
6. The Block Education Officer, Nagarpalika, Munger, District - Munger

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	None
For the State	:	Mr. Sanjay Prasad, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 24-08-2018

On 25.7.2014, while adjourning the case for four weeks to file counter affidavit, the Court made it clear that pendency of the writ petition shall not be treated as stay of the impugned order of the District Superintendent of Education, Munger dated 15.09.2010. Thereafter on 29.08.2017 prayer was made on behalf of the petitioner for adjournment. Thereafter on 21.11.2017 no one had appeared on behalf of the petitioner. For the last two days when the case was called out, no one had appeared on behalf of the petitioner. Under the aforesaid circumstances in order to facilitate counsel for the petitioner to assist the Court, the case has been listed today under the heading “For Dismissal” to provide one



more opportunity to assist the court but unfortunately today also no one has appeared to assist the Court.

2. The petitioner has filed the present writ petition challenging the order dated 15.09.2010 passed by the District Superintendent of Education, Munger, whereby the petitioner was dismissed from the service. From the pleadings it appears that the main contention of the petitioner is that the order of termination is bad for non-initiation of departmental proceeding consistent with the requirement of Article 311 of the Constitution of India.

3. On behalf of the respondents a counter affidavit has been filed, wherein the respondents, in paras-5 to 11, have taken the following stands:

“5. That it is stated that on the basis of complaint made by Smt. Meera Kumari, working as a Teacher in Middle School, Balia, Begusarai alleging that one Meera Kumari by using her name and producing all her educational certificate, working as a In-charge Principal, Girls Primary School, Shyampur, Munger in illegal manner.

6. That it is further stated that in view of the above mentioned complaint, the deponent vide letter No. 1530 dated 15.06.2010 directed the petitioner to produce the original matric certificate, training certificate as well as original service book and joining letter so that the matter with respect to genuineness of her appointment may be verified.



7. That it is further submitted that vide letter No. 1849 dated 10.08.2010 petitioner has again been asked to produce the original matric certificate, training certificate as well as original service book, but petitioner neither appeared before the authority concerned nor furnished any original document for verification.

8. That it is respectfully submitted that the deponent again vide letter No. 1950 dated 16.08.2010 asked the petitioner to appear before the authority concerned on 17.08.2010 and to produce original certificate to show the genuineness of her appointment. However, the complainant has submitted entire original certificate on 11.08.2010, which shows that the petitioner is working on the basis of education certificate of the complainant.

9. That it may be respectfully submitted that vide letter No. 2018 dated 01.09.2010 second show cause is asked to the petitioner and directed to appear before the authority concerned on 07.09.2010 and to produce original certificate to show the genuineness of her appointment, but the petitioner neither appeared before the authority concerned nor furnished original certificate for her genuineness of appointment.

10. That it may be necessary to submit here that for genuineness of the certificate the authority has made spot inspection on 05.09.2010 and 08.09.2010 on the address available in the certificate and during the course of verification, it came to know that the



petitioner on the basis of certificate of the complainant Meena Kumari, Principal in Middle School, Balia, Begusarai working as a Incharge Principal in the Girls Primary School, Shyampur, Munger.

11. That it may further be respectfully submitted that the complainant herself appeared before the authority concerned on 11.08.2010 and produced all her original education document from which it is evident that the petitioner by adopting illegal means and using the names and certificate of the complainant has able to succeed for appointment and was working as Incharge Principal in Girls Primary School, Shyampur, Munger and getting salary, for which she is not entitled for.”

4. It is now well settled that fraud deceives all decisions. The decision of the Supreme Court is settler on the point in the case of **S.P Chengalvaraya Naidu vs Jagannath : (1994) 1 SCC 1**. For ready reference paragraphs 1 to 3 of the said judgment is reproduced hereinbelow:-

" Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior.



It can be challenged in any court even in collateral proceedings.

2. Predecessor-in-interest of the respondents-plaintiffs filed application for final decree for partition and separate possession of the plaint-properties and for mesne profits. The appellants-defendants contested the application on the ground that the preliminary decree, which was sought to be made final, was obtained by fraud and, as such, the application was liable to be dismissed. The trial Judge accepted the contention and dismissed the application for grant of final decree. The respondents- plaintiffs went in appeal before the High Court. A Division Bench of the High Court went through plethora of case-law and finally allowed the appeal and set aside the order of the trial court. This appeal is by way of certificate granted by the High Court.

3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannath relinquished all his rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar, Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus standi to file



the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the appellants came to know about the release deed and, as such, they challenged the application on the ground that non- disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex. B- 1 5) before the trial court. The relevant part of the release deed is as under:

"Out of your accretions and out of trust vested in me, purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed. The said properties are in your possession and enjoyment and the said properties should henceforth be held and enjoyed with all rights by you as had been done:

So far if any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceedings without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you."



5. From the pleading of this case it appears that the petitioner has not availed the opportunity before the authorities to establish that the certificate on which she has procured appointment was her own certificate and not of another Meera Kumari and even in the present proceeding counsel for the petitioner despite opportunity failed to appear on different dates, the Court is left with no option but to dismiss the writ petition as the petitioner has not availed opportunity either before the competent authority or before this Court to establish the validity of the certificate on which she has procured appointment.

6. In the aforesaid circumstances, the Court does not find any merit in the writ petition. It is, accordingly, dismissed.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
Transmission Date	

