

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11143 of 2014

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Siyaram Chaudhary Son of Late Jagdev Chaudhary Resident of Village-
Hansopur, Police Station- Khanpur in the district of Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
5. The Regional Deputy Director of Education, Patna, Division, Patna.
6. The District Education Officer, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi, Advocate Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Mr. Raj Kishore Roy, Gp18

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 27-08-2018 Heard Mr. Siyaram Shahi, learned counsel appearing on behalf of the petitioner and the counsel appearing on behalf of the respondents.

Earlier this case was argued by Mr. Sunil Kumar, learned counsel for the petitioner at length and thereafter Mr. Siya Ram Sahi today appeared and assisted the court.

Petitioner is aggrieved by the order contained in Memo No. 766 dated 17.12.2013 passed by Principal Secretary, whether the Principal Secretary approved the order of termination of the petitioner, passed by the Director, Secondary Education, Government of Bihar, Patna contained in Memo No.



271P dated 25.07.2012 whereby the petitioner was terminated and direction was issued for recovery of salary.

Manifold submissions have been advanced on behalf of the petitioner to contend that the order of termination is bad and the order passed by the Appellate Authority is also unsustainable on facts as well.

Vide Annexure-2, it appears that after the departmental proceeding the service of the petitioner was terminated. The disciplinary authority came to the conclusion in the proceeding that the appointment of the petitioner was based on forged document and on the basis of forged appointment letter, the petitioner has received salary.

The order (Annexure-2) was passed terminating the service of the petitioner from the date of first joining and direction was also issued for recovery of amount received by the petitioner on the basis of forged certificate. The decision of the Director was affirmed by the Principal Secretary of the Department of Education, Government of Bihar, Patna. The effect of forgery and misrepresentation has been considered by the apex court in the judgment reported in **1994 (1) SCC 1** which is quoted below:-

1. 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."

In view of the judgment of the Apex Court the beneficiary of fraud, misrepresentation in the nature of



procuring appointment of forged certificate does not deserve any sympathetic consideration and as such this court does not find any merit. In addition thereto, the full Bench of this Court has already decided the similar issue in **Rita Mishra's case 1987 PLJR 1090.**

In view of the judgment of the Apex Court reported in (1994)1 SCC1 and **Rita Mishra's case**, the Court does not find any merit in the present writ application and the same is dismissed accordingly.

(Anil Kumar Upadhyay, J)

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