

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11842 of 2008

- =====
1. (a) Byasdeo
(b) Adityadeo Both sons of Late Ram Lakhan Prasad, r/o Village Chakmaskhan, P.O. Surajgaraha, P.S. Surajagraha, District- Lakhisarai
(c) Parwati Devi D/o Late Ram Lakhan Prasad W/o Mahdeo Prasad, r/o village- Mustafapur, P.O. Mustafapur, P.S. Surajgarha, Distt. Lakhisarai
(d) Satyawati Devi D/o Late Ram Lakhan Prasad W/o Ashok Tanti, r/o village- Himachaldih, PO- Dhira, PS.- Halsai District- Lakhisarai
(e) Kumari Mamta D/o Late Ram Lakhan Prasad W/o Vikash Kumar, r/o village- Godih, P.O.- Kuel, PS.- Chanan, District- Lakhisarai
(f) Satyarupa Kumari D/o Late Ram Lakhan Prasad r/o village Chakmaskan, P.O. Surajgarha, PS.- Surajgarha, Distt. Lakhisarai Pin 811106
(g) Kumari Mannu Bharti d/o Late Ram Lakhan Prasad Both resident of village- Chakmaskan, P.O. and P.S.- Surajgarh, District- Lakhisarai, Pin 811106

.... Petitioner/s

Versus

1. The State of Bihar
2. Director Primary Education, Bihar, Patna
3. District Magistrate-cum-Collector, Lakhisarai
4. District Superintendent of Education cum Sub-Division Education Officer, Lakhisarai
5. District Education Officer, Lakhisarai
6. District Treasury Officer, Lakhisarai

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 9323 of 2010

=====

1. (a) Byasdeo
(b) Adityadeo Both sons of Late Ram Lakhan Prasad, r/o Village Chakmaskhan, P.O. Surajgaraha, P.S. Surajagraha, District- Lakhisarai
(c) Parwati Devi D/o Late Ram Lakhan Prasad W/o Mahdeo Prasad, r/o village- Mustafapur, P.O. Mustafapur, P.S. Surajgarha, Distt. Lakhisarai
(d) Satyawati Devi D/o Late Ram Lakhan Prasad W/o Ashok Tanti, r/o village- Himachaldih, PO- Dhira, PS.- Halsai District- Lakhisarai
(e) Kumari Mamta D/o Late Ram Lakhan Prasad W/o Vikash Kumar, r/o village- Godih, P.O.- Kuel, PS.- Chanan, District- Lakhisarai
(f) Satyarupa Kumari D/o Late Ram Lakhan Prasad r/o village Chakmaskan, P.O. Surajgarha, PS.- Surajgarha, Distt. Lakhisarai Pin 811106
(g) Kumari Mannu Bharti d/o Late Ram Lakhan Prasad Both resident of village- Chakmaskan, P.O. and P.S.- Surajgarh, District- Lakhisarai, Pin 811106

.... Petitioner/s

Versus

1. The State Of Bihar
2. District Education Establishment Committee Through Its Chairman, Deputy Development Commissioner, Lakhisarai



3. District Education Officer, Lakhisarai
4. District Superintendent Of Education-Cum-Sub Divisional Education Officer, Lakhisarai
5. Bihar School Examination Board, Patna Through Its Deputy Secretary (Vigilance), Patna

.... Respondent/s

=====

Appearance :

(In CWJC No.11842 of 2008)

For the Petitioner/s :

For the Respondent/s :

(In CWJC No.9323 of 2010)

For the Petitioner/s :

For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 01-02-2018

Heard learned counsel for the petitioners and Bihar School Examination Board (hereinafter referred to as the 'Board'). Nobody appears on behalf of the State.

2. Basically the grievance in both the writ petitions is with regard to the service of the original writ petitioner having been terminated on the ground of his training certificate being forged and fabricated.

3. Learned counsel for the petitioners submitted that when he had joined service in the year 1973 there was no dispute raised and thereafter in January, 1999 he was paid his salary also, but thereafter it was stopped and in May, 1999, he had submitted an affidavit with regard to validity of his appointment. It was submitted



that the father of the petitioners filed C.W.J.C. No. 1622 of 2000 in which, in the counter affidavit, order dated 21.07.2005 was brought on record which was the order dismissing the petitioner from service. In such view of the matter, C.W.J.C. No. 1622 of 2000 was disposed off by order dated 22.07.2005 and the petitioner was permitted to assail the same before the appropriate forum/Court. Such order was assailed by the petitioner in L.P.A. No. 1281 of 2005 but was permitted to be withdrawn with the observation that he may move before the authorities. The petitioner thereafter filed C.W.J.C. No. 13019 of 2005 against his dismissal which was dismissed by order dated 05.11.2006 with the observation that there was an alternative remedy of appeal available to him. Service Appeal No. 07 of 2006 filed by the petitioner before the Divisional Commissioner, Munger, was dismissed by order dated 10.10.2008 and is under appeal in one of the writ petitions. Learned counsel submitted that the dismissal is based without any proper enquiry held, which is impermissible in law. It was submitted that even the report of the Board only states that the roll number and centre mentioned in the certificate, was with regard to another person and the parentage name also differed. Learned counsel submitted that the same is not enough to hold that the certificate was forged and fabricated as the authorities were obliged to disclose the details of the person who was the genuine holder of such certificate in



the records of the Board. Learned counsel submitted that after having put in long years of service, the authenticity of the document cannot be challenged, as it is more than 30 years old, in terms of the provisions of Section 90 read with Section 81 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Act'). For the proposition that without a full fledged departmental enquiry, a permanent employee cannot be dismissed from service, learned counsel relied upon the decision of this Court in the Case of **Surajmal Prasad v. State of Bihar** reported as **2009 (4) PLJR 929**. He also relied upon the decision of the Hon'ble Supreme Court in the Case of **Delhi Transport Corpn. v. D.T.C. Mazdoor Congress** reported as **AIR 1991 SC 101**, the relevant being at paragraph no. 199 as also in the case of **Shiv Pujan Prasad v. State of UP** reported as **AIR 2010 SC 256**. Learned counsel submitted that though the authorities have removed the original writ petitioner from service only on the basis of judgment of the Hon'ble Supreme Court in the case of **R. Vishwanatha Pillai v. State of Kerala** reported as **2004 (2) PLJR (SC) 106** but paragraph no. 4 of the judgment deals with there being an enquiry relating to the case of the person concerned. Learned counsel has also drawn the attention of the Court to order dated 01.05.2009 in L.P.A. No. 232 of 2009 in the case of **District Superintendent of Education, Lakhisarai vs. Sri Kabir Mahto** to



contend that where there was dispute with regard to the certificate produced by petitioner of that case being forged and fabricated, the Court interfered in his termination order on the ground that the appointment was made in the year 1972 and after about a quarter of century, order was passed stating that it was fabricated. Learned counsel submitted that the allegation against Sri Kabir Mahto was also of forged certificate. Learned counsel summed up his arguments by submitting that against the petitioner there was no departmental proceeding or enquiry and the criminal case which was instituted has now abated upon his death on 25.05.2014.

4. Learned counsel for the Board submitted that the writ petitions deserve to be dismissed for the reason that the very appointment of the petitioner is based on a forged and fabricated training certificate. It was submitted that the certificate on which the petitioner got employment has been found, after verification by the Board, that it was issued in the name of another person with a different parentage. It was further submitted that in the year 2005, when the petitioner was initially dismissed from service, the Court had granted him indulgence to move before the authority and, thus, in the appeal filed by him before the Commissioner, he had got full opportunity of being heard. Learned counsel submitted that even before the Commissioner, as also before this Court, in both the



proceedings, the petitioner has not uttered even a single word with regard to his certificate being genuine. Learned counsel submitted that the Commissioner has noted this particular aspect in his order and has rightly held that once the petitioner himself has not defended the genuineness of the certificate, no relief can be granted and that before the Commissioner the only ground taken by the petitioner was that he had put in many years of service and, thus, a sympathetic view be taken. It was submitted that upon non-denial of the fakeness of the certificate, nothing remains to be proved, as from the official records the forgery has been established.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petitions. The settled principle of law is that fraud vitiates all subsequent actions. In the present case the petitioner has not taken the stand, either before the Commissioner or in the writ petition that the training certificate on which he had been granted service is genuine and not forged and fabricated. The contention of learned counsel for the petitioner that an enquiry was required cannot be seen in isolation. In the present case, the petitioner got full opportunity to contest the matter before the Commissioner, which was pursuant to the order by the Court in the earlier occasion in the writ petition filed by the petitioner. Even before the



Commissioner, it has been recorded that the petitioner never took a stand that the certificate was genuine and, thus, to that extent, when he himself admits the fact that the certificate is not genuine, nothing remains to be proved, as the law stipulates that facts admitted need not be proved. With regard to the reliance of learned counsel for the petitioner on Sections 81 and 90 of Act, is noted only for the sake of rejecting the same. The said provisions have no applicability in the facts and circumstances of the present case as Section 81 deals with the presumption of Gazettes, newspapers and documents which are directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. In the present case, the original document is only copy of the record maintained by the Board, and the Board having certified it to be forged and fabricated, there cannot be any defence on the ground of provision of Section 81 of the Act. Similarly, Section 90 of the Act, which deals with the presumption as to documents 30 years old, the same is in context of the signature and handwriting as well as execution or attestation by the person by whom it is written, executed and attested which is produced from the custody and care of the person with whom they would naturally be. In the present case, the original is under the custody and care of the Board and not the petitioner and once the Board has certified that from the original



records the certificate produced by the petitioner cannot be matched, there cannot be any presumption under Section 90 of the Act.

6. Coming to the decisions relied upon by learned counsel for the petitioners with regard to full fledged enquiry, the facts of those cases were substantially different. In the case of **Delhi Transport Corpn.** (supra), the removal from service was without assigning any reason. In the present case, a valid reason has been mentioned, that is, of the certificate being forged and fabricated. Similarly, in the case of **Surajmal Prasad** (supra), the same was in the context that if the petitioner was required to be punished, then the persons involved in allowing such wrongdoing were also required to be hauled up and it was observed further that the Court had granted liberty to the respondents to hold enquiry but no such enquiry had been conducted and in that background, the Court had interfered in the matter. Similarly, in the case of **Shiv Pujan Prasad** (supra) the Hon'ble Supreme Court had taken the view that once the certificate was found not to be forged by the High Court, the Government could not have conducted a fresh enquiry. The facts of the present case are entirely different. As far as reliance of the petitioner on the case of **District Superintendent of Education, Lakhisarai** (supra), he had moved the Court when his salary was withheld since 1999 but he was never dismissed and rather superannuated from service on 30.06.2004



and in that background his claim to entire salary and also retirement benefits have been upheld, whereas in the present case, the original writ petitioner was noticed about the allegation of his certificate being forged and he had also submitted an affidavit and thereafter he was dismissed from service on 21.07.2005 on a legally sustainable ground. Thus, in the present case the relevant foundational facts being different, no benefit can accrue on the basis of the said order of the Court.

7. On the other hand, the authorities have rightly relied upon the decision of the Hon'ble Supreme Court in the case of **R. Vishwanatha Pillai** (supra), to the effect that right to pensionary benefits accrues from a valid and legal appointment and not from a void appointment, as would be clear from paragraphs no. 16 to 19 of the said judgment, which are quoted hereinbelow:

*"16. In **Ishwar Dayal Sah vs. State of Bihar**, 1987 Lab. I.C. 390, 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 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:

“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 possible 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 Art. 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 door is barred against him, the cloak of protection under Art. 311 is not attracted.”

*17. The point was again examined by a Full Bench of the Patna High Court in **Rita Mishra vs. Director, Primary Education, Bihar**, AIR 1988 Patna 26[: 1987 PLJR 1090]. 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:*

“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.”

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. 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 eyes of law. The right to salary or pension after retirement flow 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 false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste 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 the Court would 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 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 practising fraud.”

8. Thus, in the instant case, dismissal order cannot be said to be unwarranted.



9. Further, in the case of **Meghmala v. G. Narasimha Reddy** reported as **(2010) 8 Supreme Court Cases 383**, the Hon'ble Supreme Court has clearly held that any order obtained by playing fraud upon the competent authority, cannot be sustained in the eyes of law as fraud avoids all judicial acts, ecclesiastical or temporal. The relevant reads as under:

“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 eye of the law. “Fraud avoids all judicial acts, ecclesiastical or temporal.” (Vide S.P. Chengalvaraya Naidu v. Jagannath) In Lazarus Estates Ltd. v. Beasley 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 and State of Maharashtra v. Prabhu 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 crafty evasions and new subtleties invented to evade law.”



30. In *Shrisht Dhawan v. Shaw Bros.* 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.”

31. In *United India Insurance Co. Ltd. v. Rajendra Singh* 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*, *Union of India v. M. Bhaskaran*, *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav*, *State of Maharashtra v. Ravi Prakash Babulalsing Parmar*, *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. and Mohd. Ibrahim v. State of Bihar*)

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 Admn., Indian Bank v. Satyam Fibres (India) (P) Ltd., State of A.P. v. T. Suryachandra Rao, K.D. Sharma v. SAIL and Central Bank of India v. Madhulika Guruprasad Dahir.]

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. Chengalvaraya Naidu, Gowrishankar v. Joshi Amba Shankar Family Trust, Ram Chandra Singh v. Savitri Devi, Roshan Deen v. Preeti Lal,



Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education and Ashok Leyland Ltd. v. State of T.N.)

35. *In Kinch v. Walcott 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.*

37. *The instant case required to be examined in the light of the aforesaid settled legal propositions.*

38. *The case of the respondents has been that transfer by the vendor in favour of the appellant was not genuine. Material information had been suppressed from the Special Court. More so,*



there was no proper identification of the suit land in the earlier litigation. The reports submitted in this regard were not correct.

39. The respondents have never been able to show as under what circumstances they are interested in the suit land because before the Special Court in the first round they failed to show any document that land had ever been transferred by the tenure-holders/owners in favour of the Society or the Society had made any allotment in their favour or they were members of the said Society or they obtained any sanction from the statutory authority to raise the construction.

40. Shri M.V. Durga Prasad, learned counsel appearing for the said respondents was repeatedly asked by us to show any document on record linking the said respondents with the suit land. Though, he argued for a long time, raised large number of issues but could not point out a single document which may reflect that the respondents could have any claim on the suit land. Therefore, we are of the considered opinion that the application at their behest was not maintainable.

41. The issue of misrepresentation/fraud, suppression of material fact and identification of land had been in issue in earlier review petitions before the Special Court and in the writ petitions



before the High Court. In this regard, the Special Court in execution proceedings was fully satisfied regarding the identity of land on the basis of revenue records and came to the conclusion that there was no misrepresentation or fraud on the part of the appellant applicant. The order of the Special Court dated 11-7-2006 made it clear that all these issues had been agitated in earlier proceedings.

42. The Special Court has held as under:

“The applicants herein as contended in this LGC have filed IA No. 869 of 2002 for stay of proceedings and IA No. 861 of 2002 for summoning the record in File No. B/9815/97 from the office of the Revenue Divisional Officer on the ground of alleged fraud played by the Mandal Revenue Officer and the Mandal Surveyor. Those petitions were heard at length and were dismissed holding that the alleged fraud as contended by the applicants herein was not made out and the property which is the subject-matter of LGC No. 76 of 1996 should be delivered to the respondents herein by evicting the applicants. As mentioned already, in execution of the said order, the applicants herein were evicted and possession was delivered to the respondents.

Admittedly, the common order passed in IAs Nos. 518, 861 and 869 of 2002, by this Court was



questioned by the applicants herein by filing writ petitions before the Hon'ble High Court of A.P. and the same was also dismissed holding that the applicants herein are trying to protract the litigation and to delay the delivery of possession of the property in question to the respondents."

(emphasis added)

43. In another case decided by the Special Court vide order dated 6-7-2006 the Court had taken note of the pleadings in respect of identification of land and misrepresentation/fraud/collusion in the earlier proceedings and the observations made by the writ court in its order dated 17-12-2002 that the said respondents were interested in protracting the litigation and obstructing the implementation of the order of the Special Court dated 4-11-1997. The said order had been passed in Application No. 51 of 2002 where one of the main grounds had been that the appellant applicant had played fraud in obtaining the said order as is taken note of in para 13 of the said order by the Special Court.

44. The Special Court also took note of the earlier direction to the Revenue Divisional Officer to identify the land and possession of the same was delivered to the decree-holder. The said order was under challenge before the High Court in Writ Petitions Nos. 22953 and 23105 of



2002 wherein pleading of the alleged fraud and misidentification of suit land were taken. The Special Court came to the conclusion that there was no suppression of any fact by the Revenue Authorities or the Court was misled at the time of obtaining such orders.

45. There is a registered sale deed dated 21-5-1980 in favour of the appellant applicant. Nobody has ever filed any application before the competent court to declare the said sale deed as null and void. The respondents have no right or interest in the suit property. The Society claimed to have an agreement to sell in its favour which did not confer any title in favour of the Society. A finding of fact had been recorded in earlier proceedings that the appellant applicant was in actual physical possession of the land and he was illegally/forcibly dispossessed by the respondents.”

10. In the present case, once there is no denial of the basic fact that the certificate on which the appointment has been obtained by the original writ petitioner was not forged and fabricated and rather genuine, the opportunity given to him before the Divisional Commissioner and that too under the order of the Court in the earlier round of litigation, has clearly afforded the original writ petitioner sufficient opportunity of being heard and presenting his case. Even



before this Court, the petitioner not having even whispered or asserted with regard to the certificate being genuine, the Court can safely reach the conclusion that the original writ petitioner not having asserted the genuineness of the certificate before the authority is acceptance of fakeness of the document. Once the same is established, the right to be in service itself being bad, no pensionary benefits can be granted. In fact the authorities have been lenient with the original writ petitioner by not directing for any recovery.

11. For reasons aforesaid, the writ petitions stand dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	AFR
U	

