

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 35 of 2012**

- Paramita Shukla, W/o Shri Vinod Kumar Shukla, aged about 37 years, R/o Flat No.101, Tulip Apartment, Maruti Residency, Amlidih, Raipur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh, through Secretary, Department of Higher Education, Dau Kalyan Singh Bhawan, Raipur (CG)
2. Pt. Ravishankar University, through the Registrar, University Campus, Raipur (CG)
3. Mahant Laxminrayan Das College, Raipur, through the Principal, Near Rang Mandir, Raipur (CG)
4. Sameer Kanti Sharma, S/o Shri Kranti Prasad Sharma, aged about 39 years, R/o Santoshi Nagar, Raipur (CG)
5. Kaushal Kumar Swarnber, S/o Shri Ramdev Swarnber, aged about 30 years, C/o Sai Nagar, Nai Duniya, Raipur (CG)

---- Respondent

For Petitioner : Shri Prateek Sharma, Advocate.
 For Respondent/State : Shri Avinash Singh, Panel Lawyer.
 For Respondent No.2 : Shri Ashish Shrivastava, Advocate.
 For Respondent No.4 : Shri VR Tiwari, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****13/11/2018 :**

1. The petitioner has prayed for quashment of the merit list of postgraduate course of Master of Journalism and Mass Communication

(for short 'MJMC') published in the Dainik Bhaskar newspaper on 31.12.2011 showing respondents 4 & 5 as topper students as also for quashment of the entire proceeding of revaluation.

2. Indisputably, the petitioner appeared in the MJMC previous year examination in March-April, 2010 and final year examination in March-April, 2011. The merit list is prepared on the basis of marks secured by the candidates in both the examinations. On the strength of the marks secured by the petitioner, she was topper amongst all successful candidates, however, on revaluation, total marks were reduced from 79 to 74 in Theories of Communication and Research (paper-01) and from 91 to 65 in the Broadcast Journalism (paper-04), both of MJMC previous year examination. Since the petitioner has never applied for revaluation, she moved a representation before the Vice Chancellor on 2.1.2012 raising doubt of conspiracy because her marks of the above two papers have been reduced without her knowledge. When no action was taken by the University, the present Writ Petition has been preferred.
3. The respondent-University submitted that revaluation was done on account of duly constituted application along with requisite fee moved in the name of the petitioner, therefore, the University is not at fault.
4. During the pendency of the Writ Petition, in order to ascertain whether the petitioner had moved any application for revaluation or the same was moved by someone else playing fraud upon the petitioner, this Court had directed the University to produce such documents available

with the University carrying the petitioner's signatures and handwriting. On 17.9.2018, the University produced the documents which were sent for examination by the State Examiner of questioned documents. Report of the said examination has been produced by the University. In the said report/opinion, it is mentioned that there is strong indication of different authorship between both the sets of questions and standard documents pertaining to the handwriting available in the revaluation application and those which are admitted handwriting of the petitioner. However, handwriting in the revaluation application having been written in bold letters, the same was not comparable with the admitted handwriting which are written in small letters. On account of this shortcoming, the State Examiner could not give any definite opinion but at the same time it gave a categorical opinion about the petitioner's signatures to say that the person who has enclosed signatures on the questioned documents did not write the signatures which are admitted signatures of the petitioner. In view of the report, it appears apparent that the petitioner has not moved any application for revaluation. Therefore, result of the said revaluation would not bind the petitioner.

5. While dealing with the similar issue, this Court in the matter of **Harjeet Singh Chawla Vs. State of Chhattisgarh**, WPC No.7380/2010, decided on 6.4.2015, has observed in paras-10 & 11 thus:-

“10. However, the question is not about correctness of the revaluation, but the question here is – whether a student can be compelled to accept the result of revaluation for which he had never applied. It is entirely a different matter as to who conspired against

the petitioner to defraud him and to ruin his career, but the fact remains that the petitioner never applied for revaluation. It is not the case of the University that on account of some complaint against the petitioner, the University on its own got the answer sheets revalued. Had it been so, the jurisdiction of the Court can well be curtailed in view of the nature of academic exercise conducted by the experts. However, when such is not the case here, I am of the considered opinion that a person cannot be compelled to swallow the adverse result of exercise for which he never applied nor consented. It is a fraud on the petitioner and it is settled law that fraud vitiates all the consequential action.

11. In the matter of **Union of India and others Vs. Ramesh Gandhi**¹, the Supreme Court referred its earlier decisions in **S.P. Chengalvaraya Naidu Vs. Jagannath**² and **A.V. Papayya Sastry Vs. Govt. of A.P.**³ and held in paragraphs 25, 26 & 27 thus:-

“25. This Court on more than one occasion held that fraud vitiates everything including judicial acts. In *S.P. Chengalvaraya Naidu v. Jagannath*⁴, this Court observed as follows: (SCC p. 2, para 1)

“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 eye of the 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.*”

(emphasis supplied)

26. Again in *A.V. Papayya Sastry v. Govt. of A.P.*⁵ this Court reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows: (SCC pp. 236-37)

“38. The matter can be looked at from a different angle

1 (2012) 1 SCC 476

2 (1994) 1 SCC 1

3 (2007) 4 SCC 221

as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the applicant plaintiff which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. *All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.*

39. *The above principle, however, is subject to exception of fraud.* Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.

27. If a judgment obtained by playing fraud on the court is a nullity and is to be treated as non est by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the court by not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest.”

6. In **Harjeet Singh Chawla**, referred to above, this Court eventually quashed the result of revaluation. Since in the case at hand also, the

petitioner had not moved any application for revaluation as she was satisfied with the result of the examination declared by the University, she is not bound by the result of revaluation. The result of revaluation is therefore quashed, as it was the result of fraud being played on the petitioner.

7. As a consequence of quashment of result of the revaluation insofar as the petitioner is concerned, the University shall now prepare/draw the merit list of the concerned examination afresh.
8. For the foregoing, the Writ Petition stands disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve