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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 791 of 2018**

{Arising out of order dated 27.09.2018 passed by learned Single Judge in Writ Petition (S) No. 5641 of 2008}

- Bishhat Ram Sahu, son of Kartik Ram Sahu, aged about 62 years, R/o Village and Post Surasha, Bandha, Via Rajim, District Raipur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur (C.G.)
2. Sub Divisional Officer, Raipur (East), Forest Mandal, Raipur, Raipur (C.G.)
3. Conservator of Forest and Appellate Authority, Raipur Division, Raipur, District Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Raghvendra Pradhan, Advocate.
For Respondent Nos.1 to 3/State	:	Shri Prasun Bhaduri, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****10.12.2018**

1. Heard counsel for the Appellant and learned Government Advocate for the State.
2. The writ application of the present Appellant was dismissed by the learned Single Judge vide his order dated 27.09.2018, refusing to interfere with the order of punishment of dismissal dated 23.02.2008, Annexure P/9 to the writ application as well as the affirmance of the said decision by the appellate authority in its order dated 19.08.2008, Annexure P/11 to the writ application.
3. The primary reason for initiation of a departmental proceeding and holding of a departmental enquiry coupled with punishment was the so-called act of

fraudulence committed by the Appellant in obtaining employment by showing himself to be 8th pass when infact he had only studied till standard 5.

4. The Appellant was initially appointed on 26.08.1986 as a Forest Guard and he served the Respondents till 23.02.2008 when his services came to be terminated on the same set of charge of fraud having been played by the Appellant.
5. The Appellant was working initially as a Tendupatta Guard on daily wage from 1977 to 1986. Taking into consideration his past experience and long period of engagement under the Respondents, a recommendation was made on 03.01.1986 by the Deputy Secretary, Department of Forest, Government of Madhya Pradesh to regularize the services of such persons who were engaged as such. The Appellant was not the only beneficiary. There are list of people who came to be recommended and the Department thereafter acted upon the said recommendation. Alongwith many others, even the Appellant was appointed on a substantive basis as a Forest Guard.
6. After 22 years of service in the substantive capacity, his services came to be terminated on the ground that in the service book, his qualification had been shown as 8th pass when admittedly he was only 5th pass and this position is reflected in the service book on which the signature of the Appellant is available. This was said to be a fraud committed by him.
7. Learned Single Judge dismissed the writ application accepting the finding of the Enquiry Officer and the Disciplinary Authority and therefore, an appeal has been preferred.
8. There are two errors which appear from the order of the learned Single Judge. One, that it was not a case of appointment of the Appellant as a Forest Guard for which may be a minimum qualification of 8th pass was required. In his case

he was engaged as a daily wager as a Tendupatta Guard when a long period of work from 1977 to 1986 earned him alongwith similarly situated persons consideration for regularization for which due recommendation was made by the competent authority and acted upon by the State. Therefore, the ground that minimum 8th pass was required for appointment is misplaced. It was not a case of appointment, but regularization on the post of Forest Guard.

9. We have also noticed from Annexure P/2 which consist of a list of recommended candidates who were regularized and many such candidates who were recommended and accommodated on a substantive basis, had qualification less than 8th pass. In the same said list, the name of the Appellant figures and there it has been shown that he is 5th pass. If this is the official documentation, then there was no misrepresentation or fraud played by the Appellant as to his qualification.
10. Further, it is also apparent that he was not the only person who had been regularized on the post of Forest Guard, but many persons who did not have the minimum qualification were also taken on rolls and the case of this Appellant was not a case in isolation.
11. Coming to the next charge that the Appellant had signed on the service book where he was shown to be 8th pass, this Court can only observe that the service book is not opened by an employee. The same is maintained by the officials of the Department. As it is evident that he was only 5th pass, but why he was shown as 8th pass is for the employer to explain. He could have put his signature on the service book, but then a fraud requires a high degree of conduct, to establish the factum that this was done on purpose and intent to defraud. It was a case of regularization of the Appellant and not appointment per se.

12. The very entry into service under the Respondents was first as a daily wager, then it was a case of regularization and the official records except the service book does reflect that he was only 5th pass and since there was no requirement for being 8th pass for regularization, therefore, the charges brought against the Appellant and which became the reason for the dismissal after more than 22 years of service, is a mis exercise of power, if not abuse of power.
13. In the above factual circumstances, the writ appeal is allowed. The impugned order of the learned Single Judge dated 27.09.2018 is set aside. The orders contained in Annexure P/9 and P/11 dated 23.02.2008 and 19.08.2008 respectively are set aside.
14. If the Appellant has not reached the age of superannuation, he will be restored back in service. If he has reached the age of superannuation, he will be paid all his retrial dues and benefits as if the order of termination was never passed.
15. Writ appeal is allowed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge