

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1906 of 2015

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Nagendra Singh Son of Late Shankar Singh Resident of Village - Turki Police Station - Panapur, District - Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Regional Deputy Director, Primary Education, Saran Division, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Singh
For the State : Mr. Ankit Katriar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 12-09-2019

The present writ petition has been filed for issuance of appropriate writ/orders for quashing the order dated 07.05.2011 passed by the Regional Deputy Director, Primary Education, Saran Division, Saran at Chapra, whereby and whereunder the petitioner has been denied retiral dues upon superannuation on 30.06.2010.

The brief facts of the case are that the petitioner was appointed as Teacher by the respondent no. 3 on 30.12.1982, however, the services of the petitioner along with others was terminated in the year 1986 whereafter the aggrieved persons had filed a writ petition and the matter had travelled up to the Hon'ble Apex Court, which had disposed off the Special Leave Petition by a common order dated 30.09.1986 with a direction to



the State Government to reinstate the petitioners therein in service and retain them in service till proper selection is undertaken. Thereafter, the services of the petitioner was taken back and the petitioner was allowed to join by an order dated 07.09.1988. The petitioner is stated to have worked regularly for some years, however, the services of the petitioner was again terminated vide order dated 13.11.2008 passed by the respondent no. 3 on the ground that he did not possess the requisite qualification and he had obtained employment on the basis of a false certificate. Other similarly situated persons were also dismissed along with the petitioner herein. The petitioner had then filed a writ petition challenging the said order of dismissal dated 13.11.2008 by filing a writ petition bearing CWJC No. 18050 of 2008.

It is the further case of the petitioner that the writ petitions of similarly situated persons were heard by this Court and this Court by an order dated 20.05.2008 had disposed off several writ petitions bearing CWJC No. 16677 of 2004 and other analogous cases, whereby and whereunder the orders of dismissal of the writ petitioners therein were set aside and it was directed that the petitioner would be entitled to continuity of service and the petitioners therein would continue in service till



fresh appointments are made. In fact a coordinate Bench of this Court by an order dated 16.07.2008 passed in CWJC No. 16677 of 2004 and other analogous cases, while quashing the order of termination of similarly situated employees had further observed as follows:-

“Before parting with these cases, this Court considers it proper to make a clarification in the order. There may be persons, who approached the High Court against their initial termination in 1985 and pursued the matter before the Apex Court. There shall be no difficulty with regard to the benefit of the present order to them. There may be others, who assailed their order of termination before this Court but did not to the Supreme Court. Others on their writ petitions may have been granted relief in terms of the order of the Supreme Court. Such persons shall also be entitled to the benefit of the present order. Yet there may be cases where persons may have not assailed their termination order before this Court much less before the Supreme Court but the State itself may have decided that their cases were similarly covered by the present order. Lastly there may be cases where persons may not have assailed their order of termination in 1985 either before this Court or before the Apex Court and who may not have been reinstated by the State. They shall not be entitled to the benefit of the present order. Liberty is given to the State to examine the cases of the persons in the last category.”

Thus in nutshell the contention of the petitioner is that



even those employees who had not assailed their termination order before the Hon'ble High Court, much less before the Supreme Court but the State had itself might have decided that their cases were similarly covered and may have extended the same benefit to them, have also been directed to be given the benefit of the said order of this Court dated 16.07.2008. As far as the petitioner is concerned, he is stated to have been reinstated by the Regional Deputy Director of Education, Saran Division, Chapra vide order dated 01.04.2009 subject to the decision in the LPA/Revision to be filed by the Department as also subject to the result of the writ petition filed by the petitioner i.e. CWJC No. 18050 of 2008. It appears that as far as the said writ petition, filed by the petitioner herein i.e. CWJC No. 18050 of 2008 is concerned, the same was permitted to be withdrawn by an order dated 30.03.2012 passed by a coordinate Bench of this Court inasmuch as the same had become infructuous upon the petitioner having been reinstated in service by an order dated 01.04.2009, issued by the Regional Deputy Director, Saran at Chapra. Thereafter, the Regional Deputy Director of Education, Saran Division at Chapra by the impugned order dated 07.05.2011 has come to a finding that the petitioner, upon being granted ample opportunity, has failed to



bring any evidence regarding the validity of his B.Ed. Certificate in view of the letters dated 14.07.2008 and 19.09.2008 written by the Examination Controller, Din Dayal Upadhyay Gorakhpur University, Gorakhpur, U.P., hence, it has been found that the appointment of the petitioner is illegal and the B.Ed. Degree furnished by him is forged, thus, since the petitioner has stood retired with effect from 30.06.2010, he would not be entitled to any post retiral benefits or any other benefits.

Per contra, the learned counsel Shri Ankit Katriar, appearing for the respondent State has submitted that it appears from the record that the petitioner was appointed in the year 1982-83 as an Assistant Teacher in the Government Basic School by Shri B.L. Azim, the then Regional Deputy Director, Saran on the basis of his matric trained qualification subject to approval from the District Level Establishment Committee. Subsequently, in the year 1982-83, the Assistant Teachers appointed by Shri B.L. Azim were removed from the services after serving one month notice declaring their appointments to be irregular, hence the petitioner was also removed from his services. The affected teachers had moved this Hon'ble Court against the order of their dismissal, however, the same was



rejected. However, the affected teachers had moved the Hon'ble Apex Court and the Hon'ble Apex Court had directed to reinstate the said teachers till the fresh selection process is complete. In fact, since the learned Lokayukta had also given directions to the State authorities to examine the genuineness of the testimonials and certificates of all the teachers appointed by Shri B.L. Azim, the then Regional Deputy Director, after the petitioner and other similarly situated teachers were reinstated in service in compliance of the orders of the Hon'ble Apex Court, had sent the self attested copies of B.Ed. Certificates of such teachers including that of the petitioner for verification to the concerned college, whereupon the B.Ed. Certificate of the petitioner was found forged as is apparent from the letter dated 14.07.2008 and 19.09.2008 issued by the Examination Controller, Din Dayal Upadhyay Gorakhpur University, Gorakhpur, U.P. wherein it has been clearly mentioned that no such candidate by the name of the petitioner was ever admitted in the B.Ed. Course and the said University has not issued any such certificate to the petitioner herein. The said letters have also been annexed as Annexure-R/2 & R/3 to the counter affidavit filed on behalf of the respondent no. 3. It is thus submitted by the learned counsel for the respondents that the



case of the petitioner is outrightly a case of appointment on the basis of forged certificate. In view of the respondent authorities receiving the verification report, the services of such teachers whose certificates were found forged, were terminated and as far as the petitioner is concerned, his services was terminated vide Memo dated 13.08.2008 which was challenged by the petitioner by filing a writ petition bearing CWJC No. 18050 of 2008, which has ultimately stood dismissed as withdrawn by an order dated 30.03.2012 passed by a coordinate Bench of this Court. Unfortunately, the petitioner had stood reinstated in service on account of contempt having been filed by similarly situated employees and strict orders having been passed by the contempt court for compliance of the order in question.

It is the specific case of the respondent-State that in pursuance to the directions of the Hon'ble Apex Court, as reiterated by this Court in L.P.A. No. 448 of 2009, the respondent-State authorities had published advertisement in the daily newspaper 'Hindustan' on 24.11.2009, for completing the selection process, and the petitioner was also called for interview, which was conducted from 16.11.2009 to 20.11.2009. The petitioner had also appeared in the interview but he failed to produce any training certificate obtained by him prior to his



appointment, though there was a categorical stipulation in the advertisement that all the candidates must bring their testimonials including training certificate for verification, which they have obtained prior to their appointment. Thereafter, on completion of the interview, the Divisional Establishment Committee considered the case of the petitioner and others and in its meeting dated 21.01.2010 found and held the petitioner to be not holding the requisite qualification of training at the time of appointment in the year 1982-83 as also held that the petitioner had committed a fraud in obtaining appointment and his appointment had been made *de hors* the stipulations and provisions contained in the Departmental Notification No. 2749 dated 11.11.1975, therefore, the appointment of the petitioner was held to be illegal, fraudulent and fabricated, thus the Divisional Establishment Committee decided not to select and appoint the petitioner as Assistant Teacher in the basic school, whereafter the petitioner was found not liable to be paid any retiral dues vide Memo No. 786 dated 25.05.2011.

Yet another objection raised by the learned counsel for the respondents is that the petitioner had earlier approached this Court by filing a writ petition bearing CWJC No. 11605 of 2011 for directing the State authorities to pay the retiral dues to him.



However, the said writ petition was dismissed by an order dated 07.11.2014 on the ground that his appointment had been found to be illegal and fraudulent, hence it is submitted that the present writ petition is barred by the principles of *res judicata*. Lastly, it is submitted that the case of one Jagdish Narayan Singh, relied upon by the petitioner for claiming the retiral dues on the ground of parity, is being enquired into by the respondent authorities and appropriate action has been taken.

At this juncture, the learned counsel Shri Ankit Katriar for the respondent-State, has relied upon a judgment rendered by the Hon'ble Apex Court, reported in **(2005) 7 SCC 690 (*Bank of India vs. Avinash D. Mandivikar*)**, paragraph nos. 8, 9 and 12 are reproduced herein below:-

"8. Stand of the respondent no.1-employee is to the effect that he has put in nearly three decades of service and has about three years to go before retirement, and in terms of the High Court's order he has been denied promotion. Therefore, the order of the High Court is an equitable order.

9. A similar plea about long years of service was considered by this Court in [R. Vishwanatha Pillai v. State of Kerala and Ors.](#) 2004(2) SCC 105) to be inconsequential. In para 19 it was observed:

"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. The 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 eye of the law. The right to salary or pension after retirement flows 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 a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate 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 would the court 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 a 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."

12. Looked from any angle the High Court's judgment holding that the respondent no.1-employee was to be reinstated in the same post as originally held is clearly untenable. The order of termination does not suffer from any infirmity and the High Court should not have interfered with it. By giving protection for even a limited period, the result would be that a person who has a legitimate claim shall be deprived the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does



not even have a shadow of right even to be considered for appointment. ”

The learned counsel for the respondent-State has very aptly relied upon a Full Bench judgment of this Court reported in ***AIR 1988 Patna 26 (Rita Mishra & ors. vs. Director, Primary Education, Bihar & ors.)***, paragraph nos. 13, 14, 17, 19, 24 and 50 whereof are reproduced herein below:-

“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.

14. In this context it is, perhaps, equally well to recall that forgery is a serious public crime in the Indian law from the very beginning, and, in particular, since the enforcement [of the Indian Penal Code](#), 1860, for now more than a century and a quarter. Chapter XVIII of the said Code deals with crimes of this nature. Both forgery under [Section 463](#) and the making of a false document under [Section 464](#) are couched in the widest terms. Equally well it is to recall the earlier definition of 'valuable security' in [Section 30](#) of the said Code. This wide ranging definition denoting it, (which is important for our purpose) as a document, whereby any legal right is created, extended, transferred, extinguished or relinquished, is again framed so broadly that a letter of appointment creating a legal right to the post would come within its ambit. How gravely the law disfavors the serious aspects of the crime is manifest from the fact that more grievous forms of forgery under [Sections 467](#), [474](#) and [475](#) are made punishable with imprisonment for life. Once that is so, could it possibly be said that a person, who is guilty of a crime of this nature and is liable to punishment therefor, can, nevertheless, come in the writ jurisdiction and claim the right to salary on the basis of a document which steepens him in serious guilt ? The answer must obviously be



rendered in the negative.

17. I may now advert to Category (ii) (enumerated in Para 10) where the letter of appointment has been obtained fraudulently or for dubious considerations. One may only consider the less graver situation where such fraud or dubiousness may be civil in nature but is not aggravated enough to come within the ambit or criminality and cheating as defined in [Sections 415 and 416](#) of the Indian Penal Code and may be punishable under [Sections 417, 418, 419 and 420](#) thereof. Even in such a situation it seems to me that if fraud or dubious considerations stand established, then in the eye of law no right or remedy can stem from such a fraudulent base. Generically, it is a maxim of law that fraud vitiates everything Reference in this connection may be made to the larger principles of contract which underlie [Sections 17, 19, 23 and 24](#) of the Contract Act. It is well settled that both suggestio falsi and suppressio veri under [Section 17](#) of the Contract Act defining 'fraud' would go to the root of the agreement and would invalidate the same. Even in the realm of contract where the rule of caveat emptor or the principle of law-- let the buyer beware -- applies, still if active concealment of fraud is established, the contract would stand vitiated Again under [Section 23](#) of the Contract Act if the consideration of the object of the agreement is fraudulent, the agreement is rendered void Now if that be so, could it possibly be said that in the higher realm of status, obligations and the liability of the State for public services rendered, fraud, which is now universally condemned in the eye of law, could nevertheless become the source of a legal right to salary *stricto sensu* against the State ? The answer seems to me as somewhat plain and frontally against the petitioners. In *Lazarus Estates Ltd v. Beasley*, (1956) 1 All ER 341 at page 345, Lord Denning observed as under :

"..... I cannot accede to this argument for a moment No Court in this land will allow a person to keep an advantage which he has obtained by fraud. 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. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever....."



The aforesaid observations were expressly quoted with approval by their Lordships of the Supreme Court in [S. Pratap Singh v. State of Punjab](#), AIR 1964 SC 72.

17-A. It is unnecessary to multiply authority and there is no dearth thereof that fraud would thus vitiate even bilateral rights arising from a contract. Once it is so held rights springing from law and status and the high pedestal of public employment having a statutory base deserve even greater protection and sanctity. Consequently, it must be held in no uncertain terms that where source of the right is rooted in fraud or established dubious considerations, no right stricto sensu for salary could arise and far less be enforceable by way of mandamus in the writ jurisdiction.

19. I read the aforesaid enunciation and the ratio of the said judgment as conclusive on the point that an appointment flagrantly contrary to statutory requirements is non est and cannot be validated on any theory of factum valet.

24. To sum upon this aspect, I am inclined to the view that where the very letter of appointment is flagrantly violative of the statutory procedures prescribed for selection and appointment, the same would be illegal and there being no valid appointment in the eye of law, no consequential right to salary stricto sensu would arise. In any case, no writ of mandamus can possibly be claimed in such a situation.

*50. This stand has only to be noticed to be rejected. Undoubtedly, the burden must lie on the petitioners and it is they who have to establish their claim on the basis of a valid appointment and not for the respondent State to prove the negative. The claim of a full dress inquiry after associating the petitioners in a writ of mandamus is plainly ill-founded and does not lie in the mouth of the petitioners. On principle and even on the basis of precedent on which reliance was placed by the petitioners too, it is wholly settled that where the very original appointment to the service is invalid or forged or fraudulent then in the eye of law there is no appointment at all and declaration by the State that the alleged appointment is non est does not attract any principle of natural justice. It is unnecessary to elaborate this on principle because it is covered by the observation of the Full Bench in the aforementioned case of *Bijoy Kumar Bharti*, (1983 Lab IC 1884) (supra). Therein S. Sarwar Ali, Acting C.J., observed-*



"No one has a right to be appointed irregularly. His position is that of a person who has no right to the post. There is no stigma attached in the removal.....do not think, therefore, that in such a situation there is anything unfair in taking the decision without hearing the person likely to be affected."

In his concurring judgment, N. P. Singh, J., observed-

"It cannot be disputed that whenever the service of a person appointed on temporary basis is terminated saying that the appointment in question had been made in an irregular or illegal manner, it does not amount to any stigma or penalty. In my view, such orders cannot be held to be invalid because before passing such orders opportunity to show cause was not given to the person concerned."

Even at the cost of repetition, particular reference is called for afresh to the case of [Diwaker Prasad Yadav v. State of Bihar](#), (1986 Pat LJR 873) (supra) wherein B. P. Sinha, J. speaking for the Division Bench held as follows :--

"To sum up I find and hold that the petitioners of these writ applications have not been validly appointed. They cannot challenge the impugned orders on the ground of alleged violation of principles of natural justice. I also hold that they are not entitled to any direction for payment of arrears of their salary for the period they claim to have worked."

I have heard the learned counsel for the parties and gone through the materials on record. The only ground urged before this court by the learned counsel for the petitioner is that since no order has been passed dismissing the petitioner herein from his services prior to him attaining the age of superannuation i.e. 30.06.2010, the impugned order dated



07.05.2011 could not have been passed. This Court is of the view that since it is the specific stand of the respondents in their counter affidavit that in pursuance to the order of Hon'ble Apex Court passed in *S.L.P. No. 4746-50/86 (Kedar Giri & Ors. vs. the State of Bihar & ors.)*, *S.L.P. No. 12061-70-86 (Diwakar Tiwari & ors. vs. The State of Bihar & ors.)*, as also the order dated 20.05.2009 passed by the learned Division Bench of this Court in L.P.A. No. 448 of 2019, directing the respondent authorities to complete the selection process, the respondents had rightly taken appropriate steps by publishing an advertisement in the daily newspaper 'Hindustan' on 24.11.2009, whereupon the petitioner had also appeared in the interview, whereafter the Divisional Establishment Committee had considered the case of the petitioner and others and in its meeting held on 21.01.2010, had found and held that the petitioner was not holding requisite qualification of training at the time of appointment in the year 1982-83 and had fraudulently obtained appointment against the provisions contained in Departmental Notification No. 2749 dated 11.11.1975. In this backdrop, the Divisional Establishment Committee, finding the appointment of the petitioner to be forged, fabricated and illegal, had decided not to appoint the



petitioner as Assistant Teacher in the basic school in its meeting dated 21.01.2010. Therefore, since the Hon'ble Apex Court had directed for continuance of such teachers till fresh selections are made, the appointment of the petitioner had come to an end automatically, consequent upon the decision of the Divisional Establishment Committee taken in its meeting dated 21.01.2010, wherein it had been decided not to appoint the petitioner as Assistant Teacher.

This Court further finds that the B.Ed. Certificate/degree produced by the petitioner for the purposes of demonstrating that he holds the qualification for the purposes of being appointed as Assistant Teacher has also been found to be forged and fabricated as is apparent from the letter dated 14.07.2008 and the one dated 19.09.2008 issued by the Examination Controller, Din Dayal Upadhyay Gorakhpur University, Gorakhpur, U.P., hence this Court finds that the petitioner is lucky that the respondent State authorities have neither sought to prosecute the petitioner herein for obtaining appointment on the basis of forged and fabricated certificate/degree nor have sought to recover the salary paid to the petitioner herein. This court cannot become a party to the fraud and forgery committed by the petitioner herein, hence, no



relief can be granted to the petitioner as far as the impugned order dated 07.05.2011 is concerned inasmuch as from the second last paragraph at internal page no. two of the impugned order dated 07.05.2011, issued by the respondent no. 3, it is amply clear that prior to the retirement of the petitioner, the Divisional Education Establishment Committee, in its meeting dated 21.01.2010 and 22.01.2010, had unanimously taken a decision not to select the petitioner herein, in pursuance to the Advertisement issued on 24.10.2009, pursuant whereof the petitioner had applied and appeared before the said Committee, hence as per the orders of the Hon'ble Apex Court and the learned Division bench, as discussed herein above, the services of the petitioner had automatically stood terminated. The petitioner has not bothered to controvert the said aspect of the matter by way of any pleadings to the said effect in the main writ petition nor any rejoinder affidavit has been filed, hence the factum of the appointment of the petitioner and his certificates being forged and fabricated, stands admitted. Thus this Court holds that the appointment of the petitioner was/is forged and fabricated.

This Court further finds that since the petitioner has approached this Court with false claims, it is neither permissible



for the petitioner to plead equity nor invoke sympathy nor it would be justified for this Court to exercise equity jurisdiction in favour of the petitioner herein inasmuch as compassion cannot be allowed to bend the arms of law in case of a fraud. Moreover, since the very appointment of the petitioner has been found to be illegal, fraudulent and nonest in the eyes of law, no consequential rights of pension and other monetary benefits can be permitted. Nonetheless, the fact remains that the services of the petitioner had never been regularized, hence in such view of the matter as well, the petitioner is not entitled to grant of any retiral benefits especially in absence of the petitioner having brought on record any material to show that his services had ever been regularized by the respondent State authorities.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present case, hence the writ petition stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

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