

Shri Sadanand Raghunath Gharat } Petitioner
Versus
Union of India and Anr. } Respondents

Mr. Neel Helekar with Mr. Aniruddha A. Garge for respondents 1 and 2 (UoI).

RESERVED ON: DECEMBER 2, 2022
PRONOUNCED ON: DECEMBER 6, 2022

- 1.** The writ petition has been heard afresh in terms of our order dated November 25, 2022 in the presence of the parties.
- 2.** Original Application No. 19 of 2013, on the file of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) was dismissed by an order dated 4th January 2019. The petitioner, the original applicant before the Tribunal, is aggrieved by such order; hence, he has presented this petition dated 30th January 2019 under Article 226 of the Constitution.
- 3.** Filtering out unnecessary facts, what we find from the materials on record is that the petitioner was offered appointment on 3rd December 1977 by the office of the Collector of Central Excise, Bombay on the post of Inspector

of Central Excise. Although the petitioner claims that he was not appointed on a post reserved for Scheduled Tribe candidates, the Establishment Order No. 374/1977 dated 6th December 1977, issued by the office of the Collector of Central Excise, assigning place of posting to the Inspectors (O.G.), Central Excise, clearly records "(S.T.)" against the name of the petitioner, appearing at Sr. No. 12. The petitioner joined on 3rd January 1978 and continued in service for nearly 3 (three) decades without even producing a tribe certificate, as prescribed as early as on 20th January 1952 and revised on 29th October 1977. The certificate that the petitioner procured from the then Special Executive Magistrate, Greater Bombay reads as follows: -

"May 11, 1977.

Certificate

"This is to certify that I know Shri Sadanand Raghunath Gharat for the last 3 years. He belongs to Hindu Mahadeo Koli Community which has been classified as Scheduled Tribe by the Government of Maharashtra. To the best of my knowledge and belief, he bears good moral character."

4. Reading the contents of the above certificate, we are of the firm view that the same may at best amount to an opinion expressed by the Magistrate based on his personal knowledge but does not qualify to be a valid certificate that was issued looking into the relevant records. Be that as it may, the employer of the petitioner did not show any real interest to call upon the petitioner to produce evidence in support of the claim that he is a member of a Scheduled Tribe. In due course of time, the petitioner was promoted from the post of

Inspector to Superintendent on 4th March 1993. After completing a little in excess of 29 years of service, the petitioner opted for voluntary retirement on 3rd April 2007 by serving 3 (three) months' notice, citing Rule 48(1) of the Central Civil Services (Pension) Rules 1972 [hereafter "CCS (Pension) Rules", for short]. On 9th April 2007, the Assistant Commissioner (P & V), Central Excise, Belapur wrote to the Assistant Commissioner Central Excise, Belapur-II Division to the following effect: -

"Sub:- Preparation of post based roster in respect of Shri S. R. Gharat, Superintendent, Gr. 'B' – reg..

Please refer to this office letter of even No. dated 20.02.2007 on the above subject.

In this connection, you are requested to verify the relevant documents/details, regarding caste of Shri S. R. Gharat Superintendent from concerned competent authorities. The requisite report in this matter may please be sent to this office by 10.04.2007 positively."

5. Copy of the aforesaid letter was forwarded to the petitioner, with a direction to submit his valid caste certificate from the concerned competent authority by 10th April 2007, positively. The Assistant Commissioner, Central Excise, Belapur-II appears to have addressed a letter dated 9th April 2007 to the Tahsildar, Uran on the subject of verification of caste certificate of the petitioner. The Tahsildar, by his letter dated 13th April 2007, observed that the caste certificate of the petitioner, which was enclosed with the letter dated 9th April 2007, had not been issued by the office of the Tahsildar, but was issued by an Executive Magistrate, Greater Bombay. It was, therefore, requested that a certificate issued by the

office of the Tahsildar duly certified by the Assistant Commissioner may be sent to the office of the former for confirming whether it has been issued by the office of the Tahsildar or not. The letter concluded with the observation that in terms of Government Resolution dated 4th April 1985, *"there are no people belonging to Scheduled Tribe Community Mahadev Koli in Uran Taluka"*.

6. Soon thereafter, the petitioner responded to the letter dated 9th April 2007 on 25th April 2007. He conveyed that efforts were being made to obtain the caste certificate from the competent authority and accordingly prayed for 2 (two) months for submission of the same. Significantly, by a letter dated 25th May 2007, the Tahsildar, Uran conveyed to the Assistant Commissioner, Central Excise, Belapur-II Division as follows: -.

"In connection with the above referred letter it is to inform you that regarding work of caste verification Shri. Sadanand Raghunath Gharat presently residing at Ranvad, Taluka Uran, are being asked to remain present in this office, presented himself on 15.05.2007, but has not submitted any documentary evidence to us on that day. To produce the documents he had asked for a time period of 8 days. Accordingly he was granted time upto 22.05.2007. Even then he has not submitted any documentary evidence nor come to this office and given any explanation.

In this regard, a statement dtd. 15.05.2007 of Shri S. R. Gharat was recorded (copy enclosed). As mentioned by him there in about his family members, on inspection of the birth records maintained in this office, the birth record of Shri S. R. Gharat and his brother has become available. In the said record of village form No.14, the caste of Shri S. R. Gharat has been mentioned as "Mali". True copies of both records are enclosed herewith. The "Mali" caste belongs to "other backward classes (OBC)."

7. This communication of the Tahsildar, Uran clearly depicts that the petitioner belongs to Other Backward Class (OBC) and not to any Scheduled Tribe community.

8. On 15th June 2007, the petitioner was placed under suspension by an order of the Commissioner, Central Excise, Belapur, in exercise of power conferred by Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules 1965 [hereafter "CCS (CCA) Rules", for short] in contemplation of disciplinary proceedings. By a further order dated 25th June 2007, the Commissioner rejected the petitioner's application for voluntary retirement dated 3rd April 2007 seeking voluntary retirement with effect from 2nd July 2007 in exercise of powers conferred by the proviso to Rule 48(1) of the CCS (Pension) Rules on the ground that he had been placed under suspension and that major disciplinary proceedings were contemplated against him.

9. On 10th September 2007, the Commissioner initiated disciplinary proceedings against the petitioner by drawing up a charge-sheet, in exercise of power conferred by Rule 14 of the CCS (CCA) Rules. The charge against the petitioner reads as under: -

"Shri Sadanand Raghunath Gharat, son of Shri Raghunath Dadaji Grarat, Superintendent of Central Excise, hereafter referred to as Shri S. R. Gharat, committed gross misconduct in as much as, he wrongly claimed to be "Scheduled Tribe" candidate and availed the age relaxation of 5 years available to the SC/ST candidate while joining the department as Inspector (O.G.). Shri S. R. Gharat was appointed in the Government service as Inspector (Ordinary Grade) in terms of ESstt. Order No. 374/1977 dated 06.12.1977 issued by the then Head quarters Assistant Collector, Central Excise, Bombay vide F. No. II/31-8/77 AI (2) dtd

06.12.1977 in the category of "Scheduled Tribe" candidate as per Recruitment Rules which were in existence, at the material time. The said Shri S. R. Gharat had accordingly joined Government service, as Inspector (OG) on 03.01.1978 after attaining the age of 25 years as a Schedule Tribe candidate and in due course, he was promoted to the post of Superintendent, Central Excise against the reservation available for Schedule Tribe candidates.

Shri S. R. Gharat is appointed in the Department as Inspector (Ordinary Grade) as per above mentioned order and joined as "Scheduled Tribe" candidate on 03.01.78. As per the Recruitment Rules which were in existence at the material time for the post of Inspector (OG) issued by the Under Secretary to the Government of India New Delhi under F. No. A-12034/62/74-Ad-III-B dtd 25.07.1974, the age limit for entering in the said service was 18 to 25 years for candidates belonging to the General Category and relaxation of 5 years was permissible in case of SC/ST candidates in terms of Notification No. 2/101/72-Estt (D) dtd. 07.03.74 issued by Cabinet Secretary, Department of Personnel & Administrative Reforms, New Delhi. The said Shri S. R. Gharat in order to obtain the benefit of age relaxation as well as recruitment, had claimed himself to be a candidate belonging to the Scheduled Tribe category, while seeking appointment as Inspector (OG), Central Excise, when in fact he did not belong to the said category of Scheduled Tribe and therefore was not eligible for claiming age relaxation and hence not eligible for appointment in Government Service as Inspector (OG), Central Excise at the material time.

Shri S. R. Gharat has also mis-declared his age in the records as 24.07.1952 however as per the village sample No. 14 Birth and Death Registr year 1948 of Village Ranvad Taluka Uran supplied by Tehsildar Uran vide his letter F. No. क्र. प्रशासन/कात-१/जाप/२८७८/०७ dated 25.05.2007, it is revealed that the birth of Shri S. R. Gharat, son of Shri Raghunath Dadaji Gharat had been registered on 24.07.1948.

In view of the above, the said Shri S. R. Gharat had wrongfully gained age relaxation as well as other

recruitment benefits available to Schedule Caste/Schedule Tribe community while entering into the department for which he was not eligible otherwise which indicate that he has mis-conducted himself and acted wrongfully in a manner unbecoming of a Government Servant, by not maintaining absolute integrity and therefore appears to have contravened the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

The statement of imputation of misconduct or misbehavior in support of the above articles of charge framed against Shri S. R. Gharat, Superintendent, Central Excise is enclosed as per Article I of Annexure-II, and the list of documents on the basis of which the articles of charge has been framed against him are listed in enclosed, Annexure-III."

(underlining in original)

10. In his statement of defence dated 10th October 2007 to the charge-sheet, this is what the petitioner said: -

"Kindly refer to your Memorandum issued under F. No. II/39-1/vig/Bel/2007/879 dt- 10/09/2007, received on 10/10/07.

With due respect, I politely deny all the charges leveled against me vide your Memorandum issued under F. No. 39-1/vig/Bel/07 dt- 10/09/07."

11. It would appear from the above extract that apart from a simple denial of the charge, the petitioner did not raise any defence, far-less effective defence, to the charges. An inquiry followed, in which the petitioner was granted reasonable and adequate opportunity of defence. The inquiry officer submitted his report dated 6th June 2008 holding that the petitioner secured an appointment as Inspector on the basis of a false caste claim. The petitioner was granted opportunity to submit his representation to the report of the inquiry officer which he did by his response dated 20th June 2008. Upon consideration of the materials on record, the Commissioner,

Central Excise, by an order dated 11th September 2008, dismissed the petitioner from service. An appeal was carried from the order of the disciplinary authority, which too was dismissed by an order of 20th April 2011 of the Under Secretary, Government of India, Ministry of Finance, Department of Revenue.

12. It is thereafter that the original application was instituted before the Tribunal by the petitioner calling in question the orders dated 11th September 2008 of the disciplinary authority and 20th April 2011 of the appellate authority. As has been noted above, the original application was dismissed by the Tribunal. Before parting, the Tribunal made the following observations in paragraphs 18 and 19: -

"18. As discussed above, the record shows that not only did the Special Executive Magistrate provide a bogus caste certificate without any authority of Government and the applicant was clearly a willing and knowledgeable participant in obtaining such certificate, the respondents officials accepted this certificate and appointed the applicant in disregard of the provisions of the Act and Rules and further, without analyzing the entries in the Service Book to record "No" against the entry for Caste and Community. Again, the staff of the respondents failed to take action on the direction of their office in 1979 for follow up on the requirement of a Caste Certificate in the requisite format from the applicant. All these suggests the existence of criminal intent. The respondents are, therefore, directed to consider initiating criminal prosecution against the applicant who submitted a fraudulent certificate, attesting false entries in the Service Book and for refusing to conform to lawful orders requiring production of necessary documents; the then Special Executive Magistrate, Greater Bombay; and the officials of the respondents who allowed appointment, prepared a false Service Book, and failed to follow up on obtaining the Caste Certificate and this exercise for initiating

prosecution shall be considered and initiated within a period of four weeks of receipt of a certified copy of these orders. These actions are in accord with the mandates contained in the judgment of the Hon'ble Apex Court in Madhuri Patil supra and in the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and such action shall be initiated within eight weeks of receipt of these orders.

19. On the aspect of costs, although the applicant claims to be a cancer patient, he has obtained substantial benefits over 30 years of service and promotions to very responsible positions in the Customs Department. By filing this application, he has engaged in irresponsible litigation and caused further waste of the respondents' time and money and is therefore directed to bear the legal costs of respondents which are quantified at Rs.40,000/- and may be recovered as per law."

13. Appearing in support of the writ petition, Mr. Patil, learned advocate for the petitioner has raised 3 (three) points, viz.

(i) The petitioner did not claim at any point of time prior to his appointment that he belongs to Scheduled Tribe community; instead, his name was sponsored by the concerned employment exchange as a general candidate. Therefore, there was no material on the basis of which a valid opinion could be formed in regard to the need for initiating disciplinary proceedings.

(ii) The petitioner having applied for voluntary retirement on 3rd April 2007, to be effective from 2nd July 2007, such application could have been rejected within 90 days. However, though the order of rejection of the application

for voluntary retirement is dated 25th June 2007, it was not put into transmission for reaching the petitioner within 90 days, i.e., within 2nd July 2007; instead, it was dispatched by speed post on 4th July 2007 and received by the petitioner a couple of days later. The order dated 25th June 2007 is ante-dated and, therefore, for all purposes and intents, the petitioner must be deemed to have retired from service on 2nd July 2007. In such view of the matter, no order on the disciplinary proceedings could have been passed. The petitioner having retired from service in pursuance of Rule 48(1) of the CCS (Pension) Rules, the Tribunal erred in law in not granting him relief and instead, dismissing the original application;

(iii) The petitioner was in service for nearly 30 (thirty) years. It was a wholly unauthorised exercise on the part of the respondents to call upon the petitioner to produce certificate belonging to Scheduled Tribe at the fag end of his service career. Arbitrariness being writ large, the Tribunal ought to have quashed the proceedings and granted full relief as claimed in the original application.

14. Based on the aforesaid contentions, Mr. Patil claimed reliefs as prayed for in the writ petition by the petitioner.

15. *Per contra*, Mr. Helekar, learned advocate for the respondents, contended that the claim of the petitioner is absolutely frivolous. According to him, the petitioner was extended advantage of higher age limit for Scheduled Tribe candidates at the time of appointment. Had the petitioner been considered as a general category candidate, he would have been over-aged rendering him ineligible for appointment

on the post of Inspector of Central Excise. It was only because of the petitioner's claim that he belongs to Scheduled Tribe community that he was given the benefit of age relaxation. Precisely, the charge in the disciplinary proceedings was that the petitioner had obtained benefit of age relaxation while entering service without being entitled thereto. The petitioner could have, while denying the charges, advanced his plea that neither did he claim the benefit of age relaxation nor did the appointing authority extend such benefit. On the contrary, there was an evasive denial of the charge and despite grant of reasonable and adequate opportunity to disprove the charge, the petitioner did not do so. Based on the materials on record, the disciplinary authority rightly returned the finding that the petitioner was guilty of the charge and the Tribunal correctly arrived at the finding that the petitioner had obtained employment by deceit. There being no legal infirmity in the decision-making process, Mr. Helekar was heard to submit that there is absolutely no merit in the first contention of Mr. Patil.

16. Responding to the second contention, Mr. Helekar invited our attention to paragraph 21 of the reply affidavit of the respondents filed before the Tribunal. In paragraph 21, it was averred, while dealing with paragraph 4.13 of the original application, that the contention therein to the effect that the petitioner was deemed to have retired from service with effect from 2nd July 2007 "is totally wrong". It was further averred that the letter dated 25th June 2007 rejecting the petitioner's prayer for voluntary retirement had been personally delivered to him on 27th June 2007. The "ACKNOWLEDGEMENT" signed

by the petitioner himself was made part of the reply affidavit as Annexure R-1. Referring to paragraph 15 of the rejoinder affidavit of the petitioner to the said reply affidavit, it was urged that the petitioner came up with an unbelievable version. The petitioner having been in Government service for more than 29 years, it is an unbelievable plea that the "ACKNOWLEDGEMENT" was obtained from the petitioner *"without actually and factually giving the copy of the concerned order stating that it was being dispatched through post and as such, the copy was in fact thereafter sent and received"* through post. According to Mr. Helekar, this is nothing but an afterthought. The order of rejection dated 25th June 2007 having been delivered to the petitioner on 27th June 2007, there is no question of the petitioner ceasing to be in service of the Government with effect from 2nd July 2007.

17. The final contention of Mr. Patil was countered by Mr. Helekar by contending that there cannot be any time limit for an employer to take disciplinary action against an employee if it transpires subsequent to his appointment that employment was obtained by deceit. According to him, fraud unravels everything and the length of time taken to detect such fraud would not be relevant in such a case. At the inquiry that followed the charge-sheet, it was well and truly proved that the petitioner had projected himself as a Scheduled Tribe candidate and obtained the benefit of age relaxation. Having failed to produce a valid caste certificate that he did in fact belong to the Scheduled Tribe community, as claimed, the petitioner has to face the consequences.

18. While concluding, Mr. Helekar contended that the Tribunal was perfectly justified in dismissing the original application and the impugned order does not merit interference.

19. In his rejoinder, Mr. Patil very fairly submitted that he has no answer to defend the "ACKNOWLEDGEMENT" signed by the petitioner, signifying his acceptance of the letter dated 25th June 2007. However, he urged us to examine the matter in issue bearing in mind the totality of the facts and circumstances and in particular the fact that the petitioner had rendered service to the State all along till the date of his dismissal to the best of his ability and without any complaint in respect to discharge of his official duty.

20. We have heard the rival contentions, considered the materials on record and read the impugned order of the Tribunal. Giving due regard to what have been placed before us, we have no hesitation to hold that the action taken by the respondents to dismiss the petitioner from service following due process and the order of the Tribunal upholding such action and consequently dismissing the petitioner's original application, are unexceptionable. While we are *ad idem* with the findings returned by the Tribunal, we wish to add our own reasons for declining relief to the petitioner.

21. The petitioner had applied for voluntary retirement under Rule 48(1)(a) of the CCS (Pension) Rules. However, Rule 48 enables a Government servant, who has completed 30 years' qualifying service, to seek retirement from service. On 3rd April 2007, the petitioner had completed 29 years 3 months' service. He was, therefore, not entitled to seek

retirement under Rule 48. What applied to the petitioner was Rule 48A. Such rule enables a Government servant, who has completed 20 years' qualifying service, to give a notice of not less than 3 (three) months in writing to the appointing authority expressing his desire to retire from service. While there is a specific proviso to Rule 48 that it shall be open to the appointing authority to withhold permission to a Government to seek retirement if he is under suspension, there is no such similar proviso in Rule 48A. Since the petitioner had applied under Rule 48 and not under Rule 48A, the respondents may have failed to take notice thereof and proceeded as if the petitioner's prayer for retirement is governed by Rule 48. It is for such reason that in the order of rejection of the request for voluntary retirement dated 25th June 2007 one finds placement of the petitioner under suspension in contemplation of disciplinary proceedings as the reason for rejection of his request for voluntary retirement. Be that as it may, since error in referring to the correct statutory provision does not render an action/proceeding vitiated, nothing much turns on the petitioner applying under Rule 48 and the respondents' dealing with the application under the same provision. What emerges from a conjoint reading of Rule 48 and Rule 48A is that both of them constitute a self-contained code to deal with applications seeking voluntary retirement after completion of 30 years' qualifying service and applications for voluntary retirement after completion of 20 years of qualifying service but less than 30 years, respectively. Both provisions have one common feature, i.e., notice of three months has to be given. However, what is of

significance is that a proviso of like nature as in sub-rule (2) of Rule 48A is absent in Rule 48. What is there in Rule 48 is the second proviso to sub-rule (1), which is differently worded from the proviso to Rule 48A(2). In terms of the said proviso to sub-rule (2) of Rule 48A, if there is no refusal of the request for retirement before expiry of the period specified in the notice, the retirement would become effective.

22. Admittedly, in the present case, the petitioner was under suspension right from 15th June 2007 in contemplation of disciplinary proceedings. The respondents might have referred to the second proviso to Rule 48(1) as the reason for rejection of his request for voluntary retirement, but a provision containing wider powers [read proviso to Rule 48A(2)] being available to be exercised, the circumstances did warrant rejection of the request for voluntary retirement in view of the serious charge that was likely to be framed against the petitioner of having obtained employment by deceit. We, therefore, see no error on the part of the respondents in taking recourse to rejection of the petitioner's request, albeit by referring to an incorrect provision. At the time the request was rejected, there were sufficient materials on the basis whereof the petitioner could be proceeded against and ultimately, disciplinary proceedings having resulted in establishment of the charge that the petitioner relied on a certificate which incorrectly certified that he belongs to Scheduled Tribe community and materials having transpired in course of inquiry that he belongs to OBC category at the highest, it is clear as crystal that he had usurped a post reserved for the Scheduled Tribe candidates. Therefore, there

is absolutely no justification for us to interdict the proceedings initiated against the petitioner, may be 29 years after he had entered Government service, as unauthorized or unwarranted.

23. The contention of Mr. Patil that the petitioner stood retired from service on 3rd July 2007, and therefore, no proceedings could have been initiated against him upon termination of the relationship of employer-employee is viewed by us to be an argument in desperation. The "ACKNOWLEDGEMENT" signed by the petitioner, being Annexure R-1 to the reply affidavit of the respondents filed before the Tribunal, is clinching and seals his fate. It is incomprehensible that an officer like the petitioner, who spent almost 3 (three) decades in Government service, would be so naïve so as to acknowledge receipt of a letter without the same being handed over to him. This is against normal human conduct; and more so, in Government service, where both the employer and the employee are under an obligation to maintain official norms and protocol. Even if we are to assume that what the petitioner stated in his rejoinder affidavit is correct, it baffles us as to why such plea was not raised in the first place in the original application. The contents of paragraph 15 of the reply affidavit project nothing but a cooked-up story and a failed attempt to overcome the contents of paragraph 21 of the reply affidavit read with Annexure R-1. We are *ad idem* with Mr. Helekar that there has been no cesser of employer-employee relationship and with the rejection of the petitioner's request for voluntary retirement by the order dated 25th June 2007, since received by the petitioner on 27th June 2007, i.e., well within the period

of 3 (three) months expiring on 3rd July 2007, the respondents did have the competence, authority and jurisdiction to proceed against the petitioner departmentally and to inflict the punishment of dismissal from service.

24. The other contention that the petitioner was not recruited as a Scheduled Tribe candidate is equally unmeritorious having regard to the charge which was found to have been proved at the inquiry. Also, it cannot be lost sight of that all official documents, which were generated immediately after the appointment of the petitioner, refers to him as a Scheduled Tribe candidate. The petitioner despite being aware of the same, did not object at any point of time. It is, therefore, too late in the day for Mr. Patil to persuade us accept his contention.

25. In this context, one cannot lose sight of the decision in **Manoj Kumar vs. Govt. (NCT of Delhi)**, (2010) 11 SCC 702, where it has been held as follows: -

"8. There is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information."

(emphasis ours)

26. In **Central Bank of India vs. Madhulika Guruprasad Dahir**, reported in (2008) 13 SCC 170, the Supreme Court laid down in paragraph 15 as follows:

*"15. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. * * *"*

Thereafter the Court proceeded to observe as follows:

"18. Having considered the matter in the light of the aforesaid legal position, in our judgment, the decision of the High Court is untenable. As noted supra, the employee having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by the employee was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a reserved candidate but she usurped the same by misrepresentation and deception. In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment.

19. We are also unable to persuade ourselves to agree with learned counsel for the employee that in the absence of any finding of fraud having been played by the employee, the order of the High Court is equitable and should not be interfered with. As noted above, the selection of the employee was conceived in deceit and, therefore, could not be saved by equitable considerations."

(emphasis ours)

27. In **R. Vishwanatha Pillai vs. State of Kerala**, reported in (2004) 2 SCC 105, the Supreme Court held that appointment procured on a reserved post by producing a false caste certificate is void and *non-est* and that a person illegally holding a civil post cannot be seen to be the holder of a civil post. It was also held therein that right to pensionary benefits flows from a valid appointment and not from a void appointment; thus, in such a case, he cannot claim pensionary benefits.

28. In our opinion, suppression may be resorted to for deceiving a person and when such a deceit succeeds it would amount to fraud. It is settled law that fraud unravels everything, and a fraudulent activity ought not to be validated by a stamp of approval from the Court of Writ. Discretion vested in the Court has to be exercised judiciously and not to come to the aid of a party who has illegally and unauthorizedly obtained employment through the back door by relying on a certificate he knew was false. We find no reason to have pity on the petitioner.

29. In view of the above, we hold the writ petition to be devoid of merits. The same stands dismissed, without costs.

30. However, steps to comply with the directions contained in paragraphs 18 and 19 of the impugned order of the Tribunal in accordance with law shall be taken not before 2 (two) months from date.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)

Later:

1. Mr. Reddy, learned advocate for the petitioner seeks continuation of interim relief granted by order dated 5th February, 2019, whereby the impugned order was stayed.

2. Since the petitioner has been dismissed from service, question of his reinstatement would not arise. Also, we have deferred compliance of the directions of the Tribunal by 2 (two) months. Hence, we need not grant the prayer for continuation of interim relief.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2022.12.06
20:52:27 +0530

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)