

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 481 OF 2024

Central Bureau of Investigation
Anti-Corruption Branch,
GPOA, Kendriya Sadan, A-Wing
3rd Floor, Opp. Akurdi Railway Station,
Akurdi, Pune-411044.

.. Petitioner

Versus

Dr. Om Prakash Shukla
Age: 57 years
S/o. Onkar Nath Shukla
Present Address: Principal House
C-3 Area, NDA Khadakwasla, Pune.

.. Respondent

Mr. Amit Munde, Spl.PP a/w. Mr.Jai Vohra for the Petitioner.
Mr. Anil C. Singh, Sr.Advocate i/b. Mr.Sumedh S.Modak and Mr.Vijay
Killedar a/w. Mr.Sarvesh Deshpande for the Respondent.

CORAM : SHYAM C. CHANDAK, J.

**RESERVED ON: 27th SEPTEMBER 2024
PRONOUNCED ON: 22nd NOVEMBER 2024**

JUDGMENT :

. Present Petition filed under Article 227 of the Constitution
of India seeking for quashing and setting-aside of the impugned
Judgment and Order dated 23rd January, 2023 passed by a Court of
learned Special Judge, CBI ACB, Pune thereby said Court dismissed a

Criminal Revision Application No.240/2022 and upheld the Order dated 8th April, 2022 passed by the Judicial Magistrate First Class, Court No.1, at Pune below Discharge Application (Exhibit-12) filed by the Respondent in RCC No.3341/2020 thereby the learned Magistrate discharged the Respondent of the charge of offence punishable under Section 420 of the Indian Penal Code, 1860.

2) Rule. Rule made returnable forthwith. Heard finally by consent of the parties. Perused the record.

3) Facts giving rise to this Petition are that, on the basis of findings of Preliminary Enquiry No.PE 01(A)/2017 dated 19.05.2017, a case bearing No.RC-Pune/2018/A/0006 was registered by the Petitioner on 08.05.2018 under Sections 120-B r/w 420, 465, 471 of the I.P.C. and Section 13 (2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 against the Respondent, the then Professor (Economics), National Defence Academy (NDA), Khadakwasla, Pune presently posted as Principal of the NDA; Dr. Jagmohan Meher, Professor (Political Science), Dr. Vanita Puri, Associate Professor (Chemistry), Dr. Rajeev Bansal, Associate Professor (Mathematics), and Dr. Maheswar Roy, Head of Department, Chemistry, other unknown faculty members of NDA, unknown officials of Union Public Service Commission (UPSC), New Delhi and unknown officials of

Headquarters Integrated Defence Staff (HQ IDS), Ministry of Defence, New Delhi. It was alleged that, said accused faculty members entered into a criminal conspiracy with unknown officials of the UPSC, New Delhi and unknown officials of the HQ IDS and in pursuance thereof got selected and appointed in different posts of teaching faculty in the NDA, without possessing mandatory teaching/research experience as prescribed by the UPSC and as required by the Ministry of Defence, on the basis of forged and false certificates indicating their services experience, teaching experience and exaggerated Academic Performance Indicator (API) score. Investigation ended in filing charge-sheet under Section 420 of I.P.C. against the Respondent *vide* R.C.C. No.3341/2020.

3.1) Investigation revealed that the Respondent, while working as Lecturer, Armapore PG College, Kanpur applied for the post of Professor in Economics at NDA *vide* his application dtd.30.01.2007 against the UPSC Advertisement No.02/2007 dtd. 27.01.2007. The necessary educational and experience qualifications for the advertised post was as under:

(i) Ph.D degree in Economics from a recognized University or equivalent with 10 years teaching experience at Post Graduate Degree level and/or Research/Post-Graduate Research guidance experience in concerned subject,

OR

(ii) Ph.D Degree in Economics from a recognized university or equivalent with 15 years of Teaching/Research experience at undergraduate level in concerned subject.

3.2) The Respondent in his application dated 30.01.2007 for said post made following claims as to the teaching/research experience :-

Sr. No.	Office/ Institution	Post Held	Type of Service	Period		Total Period
				From	To	
1	Allahabad University	Research Assistant	Ad-hoc	July 1988	March 1989	9 months
2	G.B.Pant SSI, Allahabad	Research Associate	Ad-hoc	April 1989	March 1992	3 years
3	U.P. Government	Asst.Development Officer Co-op. Department	Permanent	March 1992	May 1994	2 years 2 months
4	Armapore P.G.College, Kanpur	Lecturer (teaching)	Permanent	May 1994	Till date of Application 30.01.2007	12 years 9 months
Total Teaching/Research Experience						18 years 8 months

3.3) The Respondent in support of his claim of research experience as 'Research Associate' at G.B. Pant Social Science Institute (SSI), Allahabad, during the period from April-1989 to March-1992 (3 Years), dishonestly and fraudulently submitted a certificate dated 03.04.2001 issued by Dr. Ravi Srivastava, the then Reader, G.B. Pant

SSI, wherein it has been falsely certified that the Respondent was associated with a project directed by Dr. Ravi Srivastava during the year 1989-1992 and sponsored by the Malaria Research Center of the Indian Council of Medical Research (ICMR), titled “Socio-Economic Evaluation of the Integrated Vector Control Strategy for the Control of Malaria”.

3.4) That the Respondent joined the G.B. Pant SSI, as Research Associate in the said ICMR project on 01.05.1989, under the guidance of Dr. Ravi Srivastava and, as per the attendance and salary register/s, he worked there only for 4 months and left the project after 31.08.1989 and in his place another person Shri C.P. Singh was appointed *w.e.f.* 01.11.1989 on the request of Dr. Ravi Srivastava. It was also revealed that Dr. Ravi Srivastava was relieved from G.B. Pant SSI on 07.05.1991 and the Project was closed in March-April, 1991. Thus, the Respondent dishonestly and fraudulently made a false claim in his application to UPSC regarding the research experience of 3 years at G.B. Pant SSI from April, 1989 to March, 1992.

3.5) That the investigation further revealed that the Respondent had been posted and working as Survey Officer at National Sample Survey Organization (NSSO) of Govt. of India from June 1991 to January 1992, i.e., 8 months. But, he dishonestly,

fraudulently and deliberately did not show the same while applying for the post of Professor in Economics during 2007, and claimed this period as Research experience at G.B. Pant Institute, Allahabad. That subsequently, when the Respondent applied for the Post of Principal at NDA in 2011, in comparison to the instant claimed experience of 3 years at G.B. Pant Institute from April, 1989 to March, 1992, he claimed the experience of only 2 years from 01.05.89 to 30.04.91 at G.B.Pant Institute, because from June 1991 to January 1992, he showed to have worked for 8 months, at NSSO, Govt. of India as Research Investigator.

3.6) That the investigation revealed that the Respondent was posted and working as Asst. Development Officer in Co-operative Department, U.P. Govt. during the period from March-1992 to May-1994 (2 years & 2 months). Said experience is neither related to teaching nor research and as such cannot be claimed as teaching/research experience. That the Respondent was posted and working as Lecturer in Economics at UG level at Armapore PG College, Kanpur, during the period May 1994, till date of application on 30.1.07, i.e., for 12 years and 9 months. During this period, PG classes in Economics were conducted at said Armapore PG College, only for 3 years i.e., 2003-04 to 2005-06.

3.7) The teaching/research experience claimed by Respondent for the Post of Professor (Economics) and the admissible period was as under :-

Sr. No.	Post and name of Institute	Period claimed	Period admissible	Violations
1	Research Asstt. at Allahabad University	July, 1988 to March, 1989 (9 months)	July, 1988 to March, 1989 (9 months)	Not observed
2	Research Associate, G.B.Pant Social Science Institute.	April, 1989 to March, 1992 (3 years)	May, 1989 to August, 1989 (4 months)	Wrongly claimed 2 yrs. 8 months. Certificate issued by Prof. Ravi Srivastava for period from 1988 to 1992 and by Dr. A.D. Pant from July, 1988 onwards is wrong.
3	Asst. Development Officer (ADO), Co-op. Dept., UP Govt.	March, 1992 to May, 1994 (2 years 2 months)	Not admissible	Experience claimed wrongly
4	Lecturer, Armapore P.G. College, Kanpur	May, 1994 to date of appln. i.e., 30.1.07 (12 yrs. 9 months)	11.05.94 to 30.01.07 at UG level (12 yrs 9 months). Since PG classes held only for 3 years, he can claim max. 3 yrs at PG level	Not observed
5	Claim as Supervisor/ Research Guide for Ph.D. Students at Chhatrapathi Shahuji Maharaj (CSJM) University, Kanpur.	Supervisor/ Research Guide for 15 Ph.D. Students	Supervisor/ Research Guide for 8 Ph.D. Students	

	Total Experience	18 yrs. 8 months	13 yrs. 10 months at UG level including 3 yrs. at PG level.	Not fulfilling 15 yrs. teaching / research experience at UG level or 10 yrs. Teaching experience at PG level.
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3.8) Investigation further revealed that on the basis of false claim regarding teaching/research experience, the Respondent was shortlisted and then selected by UPSC through interview for the post of Professor in Economics at NDA. Accordingly, on the basis of the joining order issued by the HQ-IDS, the Respondent joined at NDA as Professor in Economics on 18.02.2008. Thus, it is established that despite the fact that Respondent was not eligible for the post of Professor in Economics at NDA in 2007-08, he was selected and appointed as such, on the basis of his false claims about the teaching/research experiences.

3.9) Investigation also revealed that the Respondent while working as Professor in Economics, applied for the post of Principal at NDA on 12.04.2011 against UPSC Advt. No.07/2011 dtd. 09.04.2011. As per said advertisement, the essential educational and experience qualifications included 55% of marks or its equivalent, Ph.D. or equivalent published work and 15 years teaching or research experience in Universities or Colleges and other institutions of higher

education. Yet, the Respondent in his application for the post of Principal at NDA, dishonestly, fraudulently and falsely claimed the teaching/research experience of total 22 years, 6 months and 28 days as under :-

Sr. No.	Post & Name of Institute	Period claimed	Period admissible	Violations
1	Research Asst. at Allahabad University	July, 1988 to March, 1989 (9months)	July, 1988 to April, 1989 (10 months)	Not observed
2	Research Asst. at G.B. Pant Social Science Institute	01.05.89 to 30.04.91 (2 years)	May, 1989 to August, 1989 (4 months)	Wrongly claimed 1 year 8 months.
3	Investigator, NSSO, Aligarh	June, 91 to January, 92	Not admissible	Experience claimed wrongly
4	Asst. Development officer (ADO) Co-Op. Dept., UP Government	March, 92 to May, 94 (2 years & 2 months)	Not admissible	Experience claimed wrongly
5	Lecturer, Armapore P.G College, Kanpur	May, 94 to 17.02.08, i.e., 13 years, 9 months & 6 days till 17.02.08	May, 1994 to 17.02.2008, i.e., 13 Years, 9 months & 6 days till 17.02.2008	Not observed
6	Professor in Economics at NDA, Pune	18.02.08 till date of application i.e., 12.04.11 (3 years & 2 months)	Not admissible, appointment in this Post itself is wrong.	Not admissible, as appointment in this Post itself is wrong.
	Total Experience	22 yrs. 6 Months & 28 days	14 yrs., 11 months & 6 days	Not fulfilling criteria of 15 years teaching/research Experience

3.10) Finally, it is revealed that the Respondent could claim maximum experience of only 14 yrs., 11 months and 6 days and as such, he did not fulfill the criteria of 15 years teaching/research experience for the post of Principal, NDA. It is revealed that on the basis of false claims of teaching/research experience, the Respondent was shortlisted and further selected by UPSC through interview for the post of Principal at NDA. Accordingly, on the basis of the joining order issued by Head Quarter - Integrated Defence Staff (HQ-IDS), Ministry of Defence, New Delhi, the Respondent joined the NDA as Principal on 21.11.2011.

3.11) Thus, investigation revealed that during the period 2007-08, the Respondent, dishonestly and fraudulently secured appointment as Professor in Economics at National Defence Academy (NDA), Khadakwasla, Pune and subsequently, during 2011 as Principal, NDA, on the basis of false claims made in his applications to UPSC regarding his research experience at G.B. Pant SSI, Allahabad and thereby cheated the Ministry of Defence, Government of India.

4) However, according to the Respondent he was innocent, therefore, he filed an application Exhibit-12 seeking for discharge in the said case. The discharge was claimed on the grounds that it is not disputed that Professor Dr.Ravi Srivastava had issued the

alleged/subject Certificate. Dr.Ravi Srivastava has not denied or disputed his Certificate. Yet, Dr.Ravi Srivastava is not made an accused. There was no compulsion to sign the attendance register every day, during the research project as the related work was different than a normal employment. The subject 'Research Project' proposal contained that, the Project Director (Mr. Srivastava) will work out the modalities of the project and he was authorised to keep honorary/consultant as per the requirement. That, without taking an expert's opinion the Investigation Officer formed a baseless conclusion that the research experience of the Respondent is inadmissible or it is wrongly claimed. That, even if the certificate issued by Mr. Srivastava is ignored, the Respondent's experience as Assistant Development Officer from March 1992 to May 1994 can be counted and thus, the requisite 15 years experience was completed. That apart, alternatively the Respondent had the 10 years PG teaching/Research experience. Thus, he had fulfilled the essential eligibility for the post of Professor. That, during investigation the Petitioner found various irregularities against other accused persons, however, their cases have been referred to the Ministry of Defence to take a necessary action. But, the same procedure was not adopted in the case of Respondent. Thus, there is no material on record to *prima facie* indicate that the Respondent has

committed the alleged offence of Section 420 of I.P.C.

5) The Petitioner resisted the discharge application (Exh.-12) by its reply at Exhibit-16.

6) On considering the investigation material and rival submissions, *vide* Order dated 8th April, 2022 the learned Judicial Magistrate First Class, Court No.1, Pune allowed the application Exhibit-12 and discharged the Respondent. In this regard, the learned Magistrate held that, it is not the case of the prosecution that the Respondent himself prepared the false documents and thus induced the UPSC to appoint him as the Professor. It is held that, during the selection process and at the time of appointment of the Respondent as Professor in Economics, the UPSC has not verified the documents of eligibility of the Respondent nor at the time of his appointment as Principal at the NDA in the year 2011. Hence, it cannot be held that since inception there was dishonest intention on the part of Respondent. The question of authenticity of the documents and the correctness of teaching/research experience of the Respondent has been raised almost 7 years after his appointment as the Professor. It was the responsibility of the UPSC to select a suitable candidate after examining and verifying the documents of the candidates before appointment. However, the UPSC has not bothered to verify the

documents and the teaching/research experience claimed by the candidates and especially in respect of the Respondent. Had it verified the said documents at the first instance, the admissibility of teaching/research experience of the Respondent would have been determined at the time of his selection for the said post. For the fault in selection procedure by the UPSC, it cannot be said that the Respondent had dishonest intention and he induced the UPSC with the help of false documents and claiming wrong teaching/research experience. The Respondent is having essential educational qualification and experience and, whether it is admissible or not should have been determined by the UPSC at the time of his selection for the said post of Professor in NDA. However, the UPSC failed to verify the same and determine its admissibility, accordingly. On perusal of police report and documents on record, it is observed that the prosecution has failed to show that there are sufficient grounds to proceed against the accused for the offence punishable under Section 420 of the Indian Penal Code, 1860.

7) Aggrieved, Petitioner preferred a Criminal Revision Application No.240/2022 and assailed the Order of discharge before the Court of the Special Judge CBI, ACB, Pune. By the impugned Order, the said learned Judge upheld the Order of discharge more or

less for the same reasons noted by the learned Magistrate. Hence, this Petition.

8) Learned Special P.P. Mr. Munde for Petitioner submitted that, from the record of the G.B. Pant SSI, Allahabad and the statement of the witnesses it is evident that, the Respondent worked as Associate with Dr.Ravi Srivastava and did the research in the project headed by the latter but only for few months. However, in the certificate issued by Dr.Ravi Srivastava, it was claimed that said experience was of 3 years, which is false. Thereafter, the Respondent dishonestly and fraudulently used that certificate in his selection and appointment as the 'Professor in Economics', by signing a false declaration in the application for the said post. This is clearly a cheating. This act is also evident from the fact that, the Respondent suppressed that during the period from June 1991 to January 1992 he was working as Investigator, NSSO, Aligarh. That the Respondent's service as Asst. Development officer (ADO) Co-Op. Dept., UP Government, from March-1992 to May-1994 (2 years 2 months) cannot be considered either teaching or research experience. Thus, there is sufficient material to prosecute the Respondent for the alleged offence of Section 420 of I.P.C. However, all this is not considered by the trial and revisional Courts. Hence, the impugned Order is illegal

and liable to be quashed and set aside.

9) In contrast, Learned Senior Counsel Mr. Singh, for the Respondent urged that, the certificate issued by Dr.Ravi Srivastava clearly indicates that during the relevant time the Respondent worked with him as Assistant and Associate and participated in the research work on full-time and honorary basis. Therefore, said experience cannot be ignored. As per the statement of Gyanendra Kumar Sharma and Mr. Surendra Kumar, the then Section Officers, the Respondent was eligible for the post of the Professor in Economics. Accordingly, he was called for the interview. It is not the claim of the Petitioner that, any of the documents submitted by the Respondent in the said selection and appointment process was forged and fabricated. Said documents were duly considered before selection and appointment of the Respondent. Most important, Dr.Ravi Srivastava is not shown as the prosecution witness even though his statement was recorded during investigation. Dr.Ravi Srivastava was also not made as co-accused in the crime. Absolutely, there was no suppression of facts by the Respondent in the entire process of his selection. That apart, the Respondent was eligible to be appointed as the Professor, only on the basis of the Ph.D Certificate in Economics, obtained from the recognized university. Yet, the Respondent was prosecuted in the case.

This was completely erroneous and illegal on the part of the Petitioner. Hence, the trial Court rightly discharged the Respondent and it is upheld by the revisional Court. As such both the impugned Orders are perfectly legal. Hence, the Petition be dismissed.

10) It is admitted fact that, the Respondent had applied for the posts of Professor and Principal, in the NDA and was appointed so; that, the Respondent had enclosed the disputed certificate of experience issued by Dr. Ravi Srivastava; and that, the Respondent had claimed the qualification and teaching/research experience as contended by the Petitioner/prosecution.

11) Undisputedly, as per the advertisement dtd. 27.01.2007 for the post of 'Professor in Economics', in the 1st and 2nd category of essential qualifications, the common qualification was "*Ph.D degree in Economics from a recognized University*". It is not disputed by the Petitioner that, the Respondent was possessing the Ph.D degree in Economics from a recognized University, when he had applied for the post of 'Professor in Economics'. The Petitioner has conceded that, on the basis of the Ph.D itself the Respondent was eligible to be appointed as the 'Professor in Economics'.

11.1) In the 1st eligibility criteria, the alternate qualification provided for was "*or equivalent with 10 years teaching experience at*

Post Graduate Degree level". However, in his application for the post of 'Professor in Economics', the Respondent claimed that in addition to the Ph.D., he had served as Lecturer, at Armapore P.G College, Kanpur for a period of 12 yrs. 9 months (11.05.94 to 30.01.07). According to the Petitioner, said service was at UG level and during this period, the PG classes were held only for 3 years, therefore, the Respondent can claim maximum 3 years' at the PG level. Yet, in this regard the Petitioner has not observed anything adverse in row No.4 of the 2nd Table and row No.5 of the 3rd Table, in so far as the Respondent's selection and appointment as 'Professor in Economics' was concerned. It appears to be for one simple reason that the Respondent has not claimed that it was entirely the required PG level teaching experience. Another clear reason was that, the said 12 yrs. 9 months teaching experience was covered in the alternate qualification provided for in the 2nd category of eligibility criteria.

12) As noted above, in the 1st eligibility criteria, an additional/alternate qualification provided for was "*and/or equivalent with 10 years Research/Post-Graduate Research guidance experience in the subject concerned*". Likewise, in the 2nd eligibility criteria, an alternate qualification provided for was "*or equivalent with 15 years of Teaching/Research experience at undergraduate level in concerned subject*".

12.1) According to the Petitioner, the Respondent dishonestly and fraudulently made a false claim in his application to the UPSC regarding the research experience of 3 years at G.B. Pant SSI, Allahabad from April, 1989 to March, 1992. Then the Respondent supported that claim with his signed false declaration in the same application and a false “Certificate of Experience”, issued by Dr. Ravi Srivastava. Hence, the Petitioner is liable for the offence of Section 420 of I.P.C. Learned Special P.P. for the Petitioner emphatically submitted that, the aforesaid act of the Respondent is evident from the statement of the witnesses and various documents on record, collected during the investigation.

12.2) However, said claim of the Petitioner cannot be agreed with. In this regard it is significant to note that, in the 1st criteria of the qualification, the another additional/alternate essential qualification was “***and/or Research/Post-Graduate Research guidance experience in the subject concerned***”. Therefore, what was essential for the Respondent to specifically claim that he possesses the “Research/Post-Graduate Research guidance experience”. And what actually claimed by the Respondent in his application dated 30th January, 2007 was that, he has 3 years of experience as “Research Associate” from April-1989 to March-1992. In other words, the Respondent has not

distinctly claimed that he has experience as the “Research Guidance”, as notified by way of the additional/alternate criteria. Looking at the facts of the case, there appears a difference between the experiences as “Research Guidance” and “Research Associate”.

12.3) Keeping the aforesaid aside, what the disputed certificate issued by Dr.Ravi Srivastava claimed was that, initially, the Respondent worked with Dr.Ravi Srivastava as ‘Research Assistant’ in an ICSSR research project i.e. “Capital Accumulation by Rural Households in India”, during 1988 directed by Dr.Ravi Srivastava and implemented through the University of Allahabad. Subsequently, the Respondent was again associated with him in another research project during 1988-1992, sponsored by ICMR. However, the certificate does not claim that, the Respondent was taking the research guidance from Dr.Ravi Srivastava. Yet, this certificate was accepted before appointing the Respondent as the Professor. When the Respondent had offered this certificate, he had not played any kind of deception against the NDA or UPSC concerning the said certificate which allegedly resulted in cheating the said departments. As such the trial Court and the Special Court both are correct that, the UPSC failed to verify the correctness and sufficiency of the said certificate in time.

12.4) Admittedly, the said claim about the experience was based

on the certificate issued by Dr.Ravi Srivastava. However, said Dr.Ravi Srivastava is not made an accused in the case. Learned counsel for the Petitioner has candidly stated that, statement of Dr.Ravi Srivastava was recorded during the course of investigation by the investigating officer, but neither he is cited as a witness nor his statement was enclosed with the police report to rely upon the same for the purpose of oral evidence. When the reason for this omission was asked by this Court, no answer or explanation came from the Petitioner's side. It is difficult to understand how the Respondent alone is responsible for the certificate, if Dr. Ravi Srivastava can be neither accused nor a witness in the case to prove the subject certificate issued by him. Therefore, there was no valid reason for the Investigating Officer to disbelieve Dr. Ravi Srivastava and the certificate issued by him, giving undue value to the alleged statement of PW-21 Anjesh Kumar and draw an adverse inference against the Respondent.

12.5) Additionally, it is significant to note that, before accepting the Respondent's application for the post of 'Professor of Economics', said application must have been scrutinized. However, it is not the case that the certificate issued by Dr.Ravi Srivastava was doubted anytime. That apart, the selection and appointing authority had an opportunity to verify the genuineness of the said certificate before

accepting the Respondent's candidature and appointing him as the Professor. As rightly noted by the learned Special Judge, Pune in the impugned Order, a research work is not like an employment for a particular period i.e., 10/12 months which requires presence of the employee in the office. There is flexibility in the working hours as well as location in the context of the research. So, as long as researcher continuously contribute in the project, the employee/researcher is said to have gained an experience there. Hence, now, the certificate issued by Dr.Ravi Srivastava cannot be kept aside.

13) As to the contention that the Respondent suppressed about his working as Survey Officer at NSSO for 8 months from June 1991 to January 1992, the learned Special Judge, Pune had noted that a document at item No.10 (Exh.6) shows that the Respondent has elaborately mentioned about it in the application. Mr. Singh submitted that said document (Bio-Data) was annexed with the certificate issued by Dr. Ravi Shrivastava. This goes to show that there was no dishonest intention and suppression of the fact by the Respondent. Thus, the aforesaid contention gets nullified. The Petitioner could not take any exception to the aforesaid finding of the learned Special Judge.

14) It is alleged that, the Respondent has wrongly claimed the experience as Asstt. Development officer (ADO) Co-operative

Department, U.P. Government during the period from March-1992 to May-1994 (2 years & 2 months), but said experience is neither related to a teaching nor to a research. Hence, it cannot be claimed as a teaching/research experience.

14.1) In this context, it is pertinent to note that, as stated in the Respondent's application, during the aforesaid 2 years and 2 months period his nature of duties were 'Filled Development'. Against the entry of the said service experience neither he declared it as a 'teaching experience' nor as 'research experience'. Therefore, it was for the interview and the selection committee to consider as to whether this service period should be counted as a teaching or research experience, as the case may be. Why did the said body consider the said service experience to select the Respondent as the Professor, its reasoning is not forthcoming from the Petitioner. Hence, merely because the Respondent mentioned in the application about the service as Asst. Development officer, he cannot be held to have committed any wrong especially to add to the alleged act of cheating.

15) The learned Judge of the Special Court has rightly noted that, the Respondent was required to satisfy each and every qualification mentioned in the Rules/advertisement for the post of Professor in Economics. At the same time, the UPSC had every right to

relax the qualification for any candidate if they find a candidate is otherwise well qualified. Definitely UPSC is a recruiting agency which present a candidate to the Central Government for her/his appointment based on the selection process conducted by it. In the case in hand, the UPSC after considering the documents annexed with the application of Respondent, has not raised any objection and rather recommended the Respondent's name to the Secretary, Government of India, Ministry of Defence, New Delhi. In the recommendation letter, the Dy. Secretary, UPSC has specifically mentioned that the original degree/diploma etc. certificates may be kindly verified by the Ministry/Department before issue of offer of appointment. This fact is also discernible from the statement of witness MR. Gyanendra Kumar Sharma, the then Section Officer, Recruitment-III, UPSC, New Delhi.

16) The Learned Judge of the Special Court also observed that, Clause No.5 in the appointment letter dtd.24.01.2008 for the post of Professor in Economics shows that, the Respondent was required to produce the original certificates before he was allowed to join the duty. As per Clause no.7, the validity of the 'Offer of Appointment' was two months from the date of issuance of said appointment letter. However, exactly what verification process was undertaken by the authority concerned, is not clear. Therefore, it is safe to presume that, the UPSC

as well as the office of Under Secretary to the Government of India were satisfied with the certificate and documents submitted by the Respondent, and accordingly, the Respondent was appointed as the Professor. Thereafter he served for 3 years on the said post. In the backdrop, there would be no wrong if the Respondent applies for the post of Principal. That apart, the UPSC selection committee also found the Respondent eligible for the post of the Principal in the year 2011.

17) Based on the record the learned Judge of the Special Court noted that, the Investigating Officer recorded the statement of the UPSC employees. But, it does not appear that they are certainly the competent authority to judge the eligibility and adequacy of the qualification and experience required from the Respondent for the post of Professor as well as the Principal. The said learned Judge has noted that, the Investigating Officer has not recorded the statement of any expert person from the Selection Committee/Panel of the UPSC who selected the respondent for the said posts. As such, it is difficult to accept that, the Respondent was not sufficiently qualified or he was not eligible for the post of the Professor or the Principal. As a result, it cannot be said that the Respondent dishonestly and fraudulently got himself selected for the said post.

18) The aforesaid conclusion is fortified by the decision

between *Mariam Fasihuddin and Anr. Vs. State of Adugodi Police Station and Anr.*¹, cited by the learned Counsel Mr. Singh, wherein in paragraph 23 and 24 it is held that :-

“23. ... there are three components of the offence under Section 420 of I.P.C., i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed ‘deceitful’ when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. ‘Cheating’ therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.”

1. 2024 SCC OnLine SC 58.

19) In so far as exercise of powers of the revision is concerned, a useful reference can be made to a decision between ***Amit Kapoor Vs. Ramesh Chander and Anr.***², cited by the learned Counsel Mr. Singh, wherein in paragraph 12, it is enunciated as under :-

“12. *Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.*”

20) Considering the facts and circumstances of the case and the Order of discharge passed by the learned Magistrate, it is apparent

2. (2012) 9 SCC 460.

that the learned Magistrate has carefully considered the entire incriminating material in the light of the provisions of Section 420 of I.P.C. and then concluded that no case is made out under the said Section and therefore, allowed the discharge Application Exhibit-12. This Order was well scrutinised by the learned Special Judge and he confirmed the same only after giving an appropriate consideration to the incriminating material available on record. As such, I have no hesitation to hold that no error is committed by the learned Special Judge in exercising the powers of revision. Therefore, the impugned Judgment and Order need not be interfered with.

21) In view thereof, there is no substance in the Petition and the Petition is liable to be dismissed and is dismissed, accordingly.

(SHYAM C. CHANDAK, J.)