

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 15th OF APRIL, 2025

WRIT APPEAL No. 1038 of 2025

SHAILESH SINGH BHADOURIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

APPEARANCE:

Shri M.P.S.Raghuvanshi– learned Senior Counsel with Shri D.S.Raghuvanshi, learned counsel for the appellant.

Shri Ankur Mody – learned Additional Advocate General for respondents/State.

ORDER

Per. Justice Anand Pathak

1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant being crestfallen by the order dated 24.03.2025 passed by learned Single Judge in Writ Petition No.4715 of 2014, whereby the writ petition filed by the appellant has been dismissed.

2. Precisely stated facts of the case are that appellant was appointed on the post of Lower Division Clerk vide order dated

15.07.1988 passed by the Chief Medical and Health Officer, Narsinghpur. Thereafter, vide order dated 31.05.1989, the services of petitioner were absorbed in the office of Chief Medical and Health Officer Morena in Universal Immunization Center, Morena. In compliance thereof, he joined at Morena on 09.06.1989. Since then he was working in the department.

3. It appears that some complaints were made to Lokayukta and inquiry started by Lokayukta organization with regard to his appointment. Therefore, a show cause notice dated 09.05.2014 was issued by respondent No.4-Joint Director, Health Services, City Center, Gwalior alleging foul play in appointment of petitioner. Name and address of father of appellant in the appointment order were not mentioned. Even it was found that appointment order of appellant does not bear the signatures of the then Chief Medical and Health Officer who was the appointing authority and interestingly, no record pertaining to the appointment of petitioner was also found in the office of CMHO, Narsinghpur. His service book was also missing.

4. Appellant filed reply and claimed that his appointment is proper. However, impugned order was passed on 24.07.2014 by the Additional Director (Administration) Directorate of Health Services /respondent No.3. The appointment order dated 15.07.1988 was found to be null and void and his services were terminated. appellant challenged the said termination order in writ petition. Vide impugned order, writ Court dismissed the petition. Therefore, appellant is before this Court.

5. It is the submission of learned Senior Counsel appearing on behalf of appellant that to arrive to the conclusion that fraud has been committed, departmental inquiry was required to be conducted. No such inquiry was conducted therefore, impugned order is vitiated. It is further submitted that initial show cause notice was issued purportedly under Rule 10 (4) of The M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 which is for inflicting minor penalty. However, petitioner was visited with major penalty of termination of service. This is bad in law.

6. Learned counsel for the respondents/State opposed the prayer and submits that learned writ Court rightly considered the case on the basis of fraud being perpetrated by the appellant while getting appointment on the basis of forged and fabricated documents. Since, fraud has not been committed in respect of any action during the course of employment and the very appointment was based upon forged documents as well as the fact that no documents was produced regarding his appointment therefore, there was no requirement existed to conduct departmental inquiry. Appellant obtained appointment fraudulently. He refers four points referred by the authority in show cause notice dated 07.05.2014 (Annexure P-6).

7. The said points were raised in inquiry conducted by the Divisional Joint Director, Health Services, Gwalior. On the basis of those four points, show cause notice was answered by the appellant and after considering the reply, he has been terminated. Learned counsel for the respondents/State relied upon the judgment of Apex Court in the case of **The State Of Bihar and Ors. vs Kirti Narayan**

Prasad (2019) 13 SCC 250. He prayed for dismissal of appeal.

8. Heard the rival submissions.

9. This is the case where services of appellant were terminated on the ground that he obtained appointment through forged documents/fraud.

10. Show cause notice was issued to the appellant by the Additional Director (Administration) Directorate of Health Services, M.P. The said show cause notice was in pursuance to complaint lodged at the Office of Lokayukta Organization and vide letter dated 03.08.2013, inquiry report was placed. The four points surfaced in the inquiry report are important and worth reproduction for bringing clarity into the issue, which are:-

जॉच प्रतिवेदन में संभागीय संयुक्त संचालक स्वास्थ्य सेवायें, ग्वालियर अवगत करवाया है कि:-

1. यह कि आपके द्वारा सेवा में नियुक्ति आदेश की मूल प्रति, जॉच/कथन के दौरान जॉचकर्ता अधिकारी को समक्ष में प्रस्तुत नहीं किये गये बल्कि आपके द्वारा नियुक्ति आदेश की स्वप्रमाणित छायाप्रति प्रस्तुत की गई जो किसी भी राजपत्रित अधिकारी द्वारा सत्यापित नहीं होने की वजह से संदोहास्पद है।
2. जॉचकर्ता अधिकारी के समक्ष, आपके द्वारा नियुक्ति आदेश की प्रति प्रस्तुत की गई जिसमें आपके पिता का नाम एवं निवास के पते का सही उल्लेख होना, नहीं पाया गया।
3. नियुक्तकर्ता अधिकारी, तत्कालीन मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी नरसिंहपुर (दिनांक 15.07.1988 में) के हस्ताक्षर का उनके मूल हस्ताक्षर से मिलान होना नहीं पाया गया तथा मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी कार्यालय एवं जिला मलेरिया अधिकारी कार्यालय नरसिंहपुर से आपकी नियुक्ति/उपस्थिति तथा भुगतान से संबंधित कोई रिकार्ड जॉच उपरान्त मिलना नहीं पाया गया।
4. यह कि आपकी नियुक्ति दिनांक 21.07.1988 से दिनांक 08.06.1989 तथा दिनांक 08.07.1990 से दिनांक 31.03.1995 तक

साथ ही विभिन्न अवधियों का सेवा सत्यापन, जॉच उपरान्त, आपकी सेवापुस्तिका में होना नहीं पाये जाने तथा दिनांक 15.07.1988 को जारी किये गये दो नियुक्ति आदेशों में लगभग 3000 से अधिक जावक क्रमांकों का अन्तर होना, प्रकरण को संदेहास्पद बनाता है।

11. This show cause notice was based upon inquiry conducted against the petitioner and issued in respect of commission of misconduct under Rule 3(1)(ii)(iii) of The M.P. Civil Services (Conduct) Rules, 1965. In the show cause notice, he was asked to bring all documents in original in the Directorate.

12. In pursuance to show cause notice, petitioner filed his response and attached certain documents. After the inquiry, conducted by Joint Director Health Services, Gwalior, impugned order has been passed. Therefore, proper opportunity of hearing was provided to the appellant and thereafter, impugned order has been passed.

13. So far as preliminary inquiry is concerned, it conducted threadbare. Ever after issuance of show cause notice, petitioner was asked to bring all the documents in original before the authority but he failed to produce original appointment order and other documents. Surprisingly, service book of petitioner was not available. He was appointed at District Narsinghpur and from there somehow, he managed to join at Morena, a District place, more than 500 KMs away from original place of posting (Narsinghpur).

14. The impugned order also contained one peculiar fact that appointment order of appellant contains No.18896-900 whereas one G.P. Upadhyay who was appointed on same day bears No.15800-04. In one day, 3092 outward numbers are impossible to be endorsed in

office of authority at District Narsinghpur. Not only this, it was specifically mentioned in the inquiry report that appointment order does not bear signatures of Dr. N.K.Naik who was working as C.M.H.O. at the relevant point of time, his signature does not match with the signature over the appointment order (photocopy) of appellant. Despite giving sufficient opportunity to present his case with documents, appellant was failed to do so.

15. It is not a case where petitioner did anything during the course of employment; in fact, he obtained employment by preparation of forged documents. Therefore, question of holding departmental inquiry does not arise. He can not get the benefit of Article 311 of the Constitution or any other statutory rule. Departmental inquiry is held in respect of delinquent employee or civil servant who committed misconduct during the course of employment/service. Here, appointment of petitioner was *void ab initio* and rightly termed as null and void while obtaining through fraud.

16. In the case of **Kirti Narayan Prasad (supra)** Hon'ble Supreme Court has given guidance in a very categorical terms:-

17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by

*issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in *Umadevi* (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.*

18. Therefore, the Civil Appeals filed by the writ petitioners in the aforesaid batch of appeals are hereby dismissed. The Civil Appeals filed by the State of Bihar are allowed and the writ petitions filed before the High Court of Patna in the said cases are hereby dismissed. There shall be no order as to costs.

17. Beside that fraud vitiates all solemn proceedings. It is well settled principle of law that Fraud Vitiates Everything. This principle has been dealt with by the Apex Court in its various judgments viz. in the case of **R. Ravindra Reddy Vs. H. Ramaiah Reddy, (2010) 3 SCC 214, Badami Bai (D) Tr. L.R. Vs. Bhali, (2012) 11 SCC 574, Uddar Gagan Properties Ltd. Vs. Sant Singh, (2016) 11 SCC 378, K.D. Sharma Vs. SAIL, (2008) 12 SCC 481, Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133, DDA Vs. Skipper**

Construction, (2007) 15 SCC 601 and in the case of **Jai Narain Parasrampuriah Vs. Pushpa Devi Saraf**, reported in **(2006) 7 SCC 756**.

18. In view of the above discussion, learned writ Court has rightly discussed in correct perspective and passed the impugned order. Thus, no case for interference is made out.

19. Appeal stands dismissed.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE