HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

(1) **W.P. No. 17207/2017**
(Monika Vishwakarma v. State of M.P. and others)

WITH

(2) **W.P. No. 22683/2017**
(Sulochana Dwivedi v. State of M.P. and others)

(3) **W.P. No. 23573/2017**
(Anshuman Sharma v. State of M.P. and others)

(4) **W.P. No. 23574/2017**
(Balbant Singh Sikarwar v. State of M.P. and others)

(5) **W.P. No. 433/2018**
(Shahid Hussain v. State of M.P. and others)

(6) **W.P. No. 439/2018**
(Ajay Pyasi v. State of M.P. and others)

(7) **W.P. No. 751/2018**
(Awadhesh Sharma v. State of M.P. and others)

(8) **W.P. No. 1057/2018**
(Manjesh Sharma v. State of M.P. and others)

(9) **W.P. No. 1980/2018**
(Uttam Singh Chouhan v. State of M.P. and others)

(10) **W.P. No. 1989/2018**
(Ku. Bharti Tiwari v. State of M.P. and others)

(11) **W.P. No. 2133/2018**
(Beeresh Sharma v. State of M.P. and others)

(12) **W.P. No. 2334/2018**
(Munnalal Sen v. State of M.P. and others)

(13) **W.P. No. 2447/2018**
(Amrish Kumar Dubey v. State of M.P. and another)

(14) **W.P. No. 2610/2018**
(Rameshwar Prasad Rajpoot v. State of M.P. and others)

(15) **W.P. No. 3075/2018**
(Vivek Ahirwar v. State of M.P. and others)

(16) **W.P. No. 3687/2018**
(Mayank Kumar Jain v. State of M.P. and others)

(17) **W.P. No. 3926/2018**
(Renu Rajput v. State of M.P. and others)

(18) **W.P. No. 4058/2018**
(Vaishali Jain v. State of M.P. and others)

(19) **W.P. No. 4060/2018**
(Neetu Upadhyay v. State of M.P. and others)

(20) **W.P. No. 4062/2018**
(Varnika Chandel v. State of M.P.)

(21) **W.P. No. 16273/2017**
(Abhishek Pippal and another v. State of M.P. and others)

(22) **W.P. No. 16583/2017**
(Rahul Rajput v. State of M.P. and others)

(23) **W.P. No. 4064/2018**
(Ankit Kulshrestha & others v. State of M.P. and others)

(24) **W.P. No. 4176/2018**
(Vishal Kumar Chidar v. State of M.P. and others)

(25) **W.P. No. 4181/2018**
(Rizwana Khan v. State of M.P. and others)

(26) **W.P. No. 4185/2018**
(Ravi Katariya v. State of M.P. and others)

(27) **W.P. No. 4664/2018**
(Mohammad Gulam Ansari v. State of M.P. and others)

(28) **W.P. No. 4824/2018**
(Banti Kumar Ahirwar v. State of M.P. and others)

(29) **W.P. No. 22844/2017**
(Vijay Singh Dhakad v. State of M.P. and others)

(30) **W.P. No. 5160/2018**
(Anand Shinde v. State of M.P. and others)

(31) **W.P. No. 5162/2018**
(Kuldeep Verma v. State of M.P. and others)

(32) **W.P. No. 5194/2018**
(Alok Gupta v. State of M.P. and others)

(33) **W.P. No. 3301/2018**
(Yogesh Batham v. State of M.P. and others)

(34) **W.P. No. 1897/2018**
(Smt. Roshni Dwivedi v. State of M.P. and others)

(35) **W.P. No. 5821/2018**
(Lakhan Singh Baghel v. State of M.P. and others)

(36) **W.P. No. 6365/2018**
(Rajesh Rajawat v. State of M.P. and others)

(37) **W.P. No. 6580/2018**
(Ku. Shekh Ibrana v. State of M.P. and others)

(38) **W.P. No. 7595/2018**
(Priyank Gupta v. State of M.P. and others)

(39) **W.P. No. 7714/2018**
(Priyanka Rajput v. State of M.P. and others)

(40) **W.P. No. 8609/2018**
(Ku. Manisha Gehalot v. High Court of M.P. and others)

(41) **W.P. No. 8844/2018**
(Ku. Varsha Rani Gupta v. State of M.P. and others)

(42) **W.P. No. 9197/2018**
(Sadhana Bismil v. State of M.P. and others)

(43) **W.P. No. 9714/2018**
(Anjali Yadav v. State of M.P. and others)

(44) **W.P. No. 15310/2018**
(Anjali Yadav v. State of M.P. and others)

CORAM :
Hon'ble Mr. Justice Hemant Gupta, Chief Justice
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Appearance:

Mrs. Shobha Menon, Senior Advocate with Mr. Rahul Choubey, Advocate and Mr. Sanjay K. Agrawal, Advocate for the respective petitioners.

Mr. Bramhadatt Singh, Government Advocate and Mr. Amit Seth, Government Advocate for the respondents-State.

Whether Approved for Reporting : Yes

Law Laid Down:

- The "fraud" vitiates every action. If the examination process is tainted by fraud or there are mass irregularities in the conduct of examination, no opportunity of

hearing is required to be provided to the candidates. - *Relied – Supreme Court decisions reported as* **(2016) 7 SCC 615 (Nidhi Kaim v. State of M.P.)** and **(2017) 4 SCC 1** (**Nidhi Kaim v. State of M.P.)**

- The eligibility certificate was cancelled only on the basis of report furnished by Special Task Force of M.P. Police. The decision to cancel eligibility certificate has to be taken by the examining body on such evidence, as may be available with it from whatever and whichever source but the decision to cancel the eligibility certificate has to be of the Authority conducting the examination. - The decisions relied by the Respondents in the cases of **(1970) 1 SCC 648** (**The Bihar School Examination Board v. Subhas Chandra Sinha)**; **(2002) 5 SCC 533 (B. Ramanjini v. State of A.P.)**; **(2016) 7 SCC 615 (Nidhi Kaim v. State of M.P.**); **2018 (1) MPLJ 491 (Dharmendra Singh Shakya v. State of M.P.**) and **(2018) 1 MPLJ 572 (Niharika Tiwari v. State of MP.**) are ***distinguished*** on this point.

- The examining body when examines the allegations of fraud or mass irregularities in conduct of examination, the examining body is not performing the duties of judicial proceedings. Therefore, the provisions of the Evidence Act, 1872 are not applicable to the examining body, as the provisions of Evidence Act are applicable only to judicial proceedings. Therefore, the independent inquiry is required to be conducted by examining body as to whether the examination process undertaken by them is tainted or not.

- Though the eligibility certificate was cancelled on the basis of the report of the Special Task Force but the State has given reasons in respect of each candidate in the return filed but such reasons are not part of the order cancelling the eligibility certificate. Therefore, additional reasons cannot be supplied to support the order of cancellation of eligibility certificate. – ***Relied -*** (**1978) 1 SCC 405 (Mohinder Singh Gill v. CEC, New Delhi**).

- Consequent to cancellation of eligibility certificate, the employer in some cases have passed an order of termination. The question as to whether the employee would be entitled to be reinstated or grant of back wages, has to be examined after the final decision is taken by the examining body and in terms of the final decision an appropriate order would be passed by the employer in respect of back wages.

Significant Paragraph Nos. : **9 to 11 & 18 to 21**

Reserved on: 17.09.2018

O R D E R

(Pronounced on this 26th day of September, 2018)

Per : Hemant Gupta, Chief Justice:

This order shall dispose of bunch of writ petitions challenging the similar order dated 05.08.2017 whereby the Public Instructions Department, Madhya Pradesh, Bhopal (M.P.) has cancelled the eligibility certificates of 2947 candidates, who appeared in Hindi or English Shorthand or Typing Examination in the year 2013.

2. In some cases, consequent to the said order dated 05.08.2017, the orders of termination have been passed by the employer. Such writ petitions are also taken up for hearing along with present petitions. However, for the facility of reference, the facts are taken from Writ Petition No.1897/2018 (Smt. Roshni Dwivedi v. State of M.P. & others).

3. An advertisement was published by the Directorate of Public Instructions on 05.02.2013 for conduct of English, Hindi Shorthand Examination on 14.04.2013 and English or Hindi Typing test on 14.04.2013 and on 21.04.2013, i.e. an eligibility examination for appointment by the different departments of the State Government from time to time. The petitioner appeared in Hindi Shorthand Examination and is said to have attained the speed of 100 words per minute. It is, thereafter on 18.09.2015, the petitioner was appointed on temporary basis for a period of two years in the police department. The notebook on which the petitioner has taken shorthand dictation and some other documents has been attached with the return filed by the respondents-State as Annexure R-15 (page 557 to 563). At

page 563, the expert has opined that the petitioner has been declared qualified though she is “fail”. The reasons have been mentioned in the said page.

4. The petitioner has challenged the order of cancellation of the certificate (Annexure P-1) issued on 19.07.2013, *inter alia,* on the ground that the impugned order is violative of the principles of natural justice as no show cause notice was issued to the petitioner. Still further, the petitioner is not arrayed as an accused in the FIR (registered as Crime No.9/2013 dated 11.10.2013) nor the petitioner was charge-sheeted in the final report submitted. Therefore, the examination result of the petitioner could not have been cancelled on the basis of the report of Special Task Force (STF) constituted to investigate the said FIR. It is also argued that the Special Task Force has no jurisdiction to recommend the cancellation of the result and that the examining body has never conducted any independent inquiry to examine the correctness of the recommendation made by the STF.

5. The order dated 05.08.2017 recites that the examination was conducted on 14.04.2013 and 21.04.2013 at 128 examination centers. Thereafter, on the basis of complaints, STF has seized the documents relating to the examination and has found that the answer-sheets of 2947 candidates out of 11968 candidates, who appeared for the examination, are suspicious. As per the report of the STF, the result of 2947 candidates, declaring them as qualified in the respective tests, is liable to be cancelled for the reason that in the answer-sheets, lines etc. have been erased to facilitate fresh typing, typing on the reverse side of the copies, use of

whitener, removal of the signature of the examiner and also typing below the signature of the examiner has been done. Thus, it is sought to be conveyed that the examination process is tainted having been conducted fraudulently.

6. Learned counsel for the petitioner relies upon a Division Bench judgment of this Court reported as **2015 (1) MPLJ 138** (**Shishuvendra Singh Tomar and others v. State of M.P. and others)**, wherein it has been held that the Authority conducting the examination has to form its independent opinion as to whether the examination process is tainted on account of mass irregularities.

7. On the other hand, learned counsel for the respondents-State referred to the decisions of the Supreme Court reported as **(1970) 1 SCC 648** (**The Bihar School Examination Board v. Subhas Chandra Sinha and others)**; **(2002) 5 SCC 533 (B. Ramanjini and others v. State of A.P. and others)**; **(2016) 7 SCC 615 (Nidhi Kaim v. State of Madhya Pradesh and others**); and **(2017) 13 SCC 621 (Gohil Vishvaraj Hanubhai and others v. State of Gujarat and others**) to contend that no opportunity of hearing is required to be given when there is mass irregularity in the conduct of examination. Learned counsel for the State also places reliance on certain judgments of this Court reported as **2018 (1) MPLJ 491 (Dharmendra Singh Shakya v. State of M.P. and others**) and **(2018) 1 MPLJ 572 (Niharika Tiwari v. State of MP. and others**). Reliance is also placed upon an order passed by a Gwalior Bench of this Court in **W.P. No.2839/2017** (**Arvind Dhakad v. The State of M.P. and others**) decided on 13.04.2018 along with connected matters.

8. We have heard learned counsel for the parties and find that the order passed by the respondent No.3 to cancel the eligibility certificate cannot be sustained.

9. The entire basis of the order passed on 5.8.2017 is the report of the STF. None of the reasons recorded by the STF have been examined by the respondent No.3 to return an independent finding as to irregularities in the conduct of the examination. In the return filed, the State has given reasons in respect of each candidate, which led to cancellation of eligibility certificate but such reasons were not made part of the order cancelling the eligibility certificate. Therefore, in terms of decision of the Supreme Court reported as (**1978) 1 SCC 405 (Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others**), the additional reasons cannot be supplied to support the order passed, wherein it was held as under:-

> **"8.** The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC 16)*:
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> > "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed

> objectively with reference to the language used in the order itself."
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> Orders are not like old wine becoming better as they grow older."

10. In **Shishuvendra Singh Tomar**'s case **(supra)**, the Professional Examination Board revoked the examination result of the petitioners therein on the ground that the petitioners have indulged in unfair means during the examination within the meaning of Clause 2.11 of the Rule Book. In the said case, no independent inquiry was undertaken by the Professional Examination Board but the examination was cancelled on the basis of the intimation received from the Investigating Officer. The Court found that the Board did not set up inquiry committee of its own to inquire into the factual matter referred in the communication of the STF. The relevant paragraphs from the said decision are reproduced as under:-

> "**17**. In our opinion, that report may be a relevant material to be considered during the inquiry to be undertaken by VYAPAM. But, that report, by itself, will not be sufficient to answer the issue as to whether the act of commission or omission mentioned therein, is a case of commission of unfair means by the concerned candidate and more so, of resorting to mass copying or mass malpractice. Something more will have to be spelt out. Further, as observed by the Division Bench of this Court in the case of Ku. Pratibha Singh (Minor) vs. State of M.P. and others, W.P. No.20342/2013, decided on 11.04.2014, VYAPAM is the sole Authority to deal with all aspects concerning the examination conducted by it. Thus, the stand taken by VYAPAM that no independent inquiry would be necessary before exercise of power to cancel the examination results of the concerned candidates, does not commend to us.
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> **19**. Be that as it may, we find that neither the note-sheets nor the communications exchanged between the officials of VYAPAM and of Special Task Force, even remotely suggest that subjective satisfaction or

> conclusion of the appropriate Authority of VYAPAM, about the existence of facts constituting commission of organised unfair means by the concerned candidate or to be a case of mass copying or mass malpractice has been recorded. Instead, the note-sheets make it amply clear that VYAPAM merely went by the opinionated remark of the Investigating Agency and mistook its recommendation of taking action against the concerned candidates as sufficient, without conducting any independent inquiry of its own. A priori, it is a clear case of non-application of mind by VYAPAM, if not abdication of its duty before exercising the drastic power of cancellation of examination results of the petitioners.
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> *** *** ***
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> **26**. Taking over all view of the matter, therefore, we have no hesitation in quashing and setting aside the impugned common order dated 13.06.2014 passed by VYAPAM and also direct the respondents not to give effect to the said order against the petitioners. At the same time, VYAPAM is granted liberty to commence independent inquiry on the basis of information received from the Investigating Agency (Special Task Force) and to proceed in the matter on the basis of the view formed in that inquiry. That inquiry will have to proceed on its own merits and in accordance with law. All questions in that behalf are left open."

11. The judgment in **Shishuvendra Singh Tomar**'s case **(supra)** covers the issue raised in the present bunch of cases as well, as no independent inquiry has been conducted by the examining authority into the conduct of the examination but the report of the STF was made the sole basis of cancellation of the certificate of eligibility.

12. Mr. B.D. Singh, learned counsel for the respondents-State vehemently relied upon the judgment in **Bihar School Examination Board (supra**). That was a case of cancellation of Annual Secondary School Examination of 1969 in relation to Hanswadih Centre in Shahbad District. The Supreme Court held as under:-

> "**13**. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular center. If it is not a question of charging any one individually with unfair-means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

13 In **B. Ramanjini's** case (**supra**), the Court was examining the cancellation of declaration of results of 1998 District Selection Committee written test in Anantapur District. Again the Court held that the fair procedure would mean that the candidate taking part in the examination must be competing with each other by fair means. One cannot have an advantage either by copying or by having a fore-knowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. However, the result was cancelled before publication of the same but on the basis of a conclusion drawn by the examining body. Therefore, such judgment is relevant to determine probity in the examination process but not that the material collected by the police could form sole basis of cancellation of the eligibility certificate. The relevant extracts of the said decision read, thus:-

"7. In matters of this nature, as to how the courts should approach is explained in the *Bihar School Examination Board vs. Subhas Chandra Sinha & Ors. (1970) 1 SCC 648* and *Board of High School & Intermediate Education, U.P., Allahabad vs. Ghanshyam Dass Gupta & Ors. AIR 1962 SC 1110*. The facts revealed above disclose not only that there was scope for mass copying and mass copying did take place in addition to leakage of question papers which was brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs.2,000 each. These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centres. It is clear that so far as the centre at the Anantapur District is concerned, there was enough reason for the Government to cancel the examinations. We have no doubt in our mind that what has weighed with the Government is the letter of the Collector accompanied by the report of the Superintendent of Police, though unfortunately the same does not seem to have been made available to the High Court, which was the basis for making the order on 15-5-1998 cancelling the examination and holding of the fresh examination.

8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19-4-1998. The same stood cancelled by the order made on 15-5-1998. Fresh examinations were held on 19-7-1998 and results have been published on 29-7-1998. Interviews were however held on 29-7-98 in such cases. The events have taken place in quick succession. The parties have approached the court after the further examinations were held and after having participated in the second examination. It is clear that such persons would not be entitled to get relief at the hands of the court. Even

> if they had not participated in the second examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for large number of candidates and in Anantapur District alone nearly 1800 candidates were selected as a result of the examinations held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15-5-1998 in cancelling the examinations and holding fresh examination."

14. In **Nidhi Kaim's** case **(supra)** the irregularities in the Pre-medical Test for the year 2008 to 2012 were examined. The inquiry was conducted by the Professional Examination Board. The Bench considered various judgments and held that rule of *audi alteram partem* is not applicable to the cases where unfair means were adopted by relatively large number of students and also where process of examination is vitiated. The Court held as under:-

> "42. From an analysis of the above decisions, the following principles emerge:
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> *** *** ***
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> 42.2. But the abovementioned principle is not applicable to the cases where unfair means were adopted by a relatively large number of students and also to certain other situations where either the examination process is vitiated or for reasons beyond the control of both students and the examining body, it would be unfair or impracticable to continue the examination process to insist upon the compliance with audi alteram partem rule.
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> *** *** ***
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> 42.4 The scope of judicial review of the decision of an examining body is very limited. If there is some reasonable material before the body to come to the conclusion that unfair means were adopted by the students on a large scale, neither such conclusion nor the evidence forming the basis thereof could be subjected to scrutiny on the principles governing the assessment of evidence in a criminal court.

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44. In the light of the principles of law emerging from scrutiny of the abovementioned judgments, we are of the opinion that case on hand can fall within the category of exceptions to the rule of audi alteram partem if there is reliable material to come to the conclusion that the examination process is vitiated. That leads me to the next question – whether the material relied upon by the Board for reaching the conclusion that the examination process was contaminated insofar as the appellants (and also some more students) are concerned and the appellants are the beneficiaries of such contaminated process, is tenable?"

15. Later, the matter was referred to a Larger Bench in view of the difference of opinion in respect of relief to be granted in appeal. The three Judge Bench considered the matter in a judgment reported as **(2017) 4 SCC 1** (**Nidhi Kaim and another v. State of M.P. and others)** and held as under:-

"81. During the course of hearing, it could not be seriously disputed at the hands of learned counsel for the appellants, that the appellants' admission to the MBBS course, was based on established deception and manipulation. All the same, we will expressly deal with the instant aspect of the matter, and the extent of the appellants' involvement, in the following paragraph. It was also not disputed at the hands of learned counsel, that the cause and effect of fraud, was determined by the Court of Appeal, in *Lazarus Estates, Ltd. v. Beasley,* (1956) 1 All E.R.341. The consequences of fraud, as determined by the Court of Appeal (in the above judgment), have been repeatedly approved, by this Court. In the above judgment Denning, L.J., had observed as under: (QB pp.712-13)

"*We are in this case concerned only with this point: Can the declaration be challenged on the ground that it was false and fraudulent*? It can clearly be challenged in the criminal courts. The landlord can be taken before the magistrate and fined £30 (see Sch. 2, para. 6) or he can be prosecuted on indictment, and (if he is an individual) sent to prison (see s. 5 of the Perjury Act, 1911). *The landlords argued before us that the declaration could not be challenged in the civil courts at all, even though it*

> *was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their fraud.* The increase in rent would pay the fine many times over. 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; see, as to deeds, Collins v. Blantern (2) (1767) (2 Wils. K.B. 341), as to judgments, Duchess of Kingston's Case (1776) (1 Leach 146), and, as to contracts, Master v. Miller (1791) (4 Term Rep. 320). So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it*."
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> (emphasis supplied)

We need to say no more, in the manner how fraud has to be dealt with, whenever it is established. However, stated simply, nothing … nothing … and nothing, obtained by fraud, can be sustained, as fraud unravels everything. The question which arises for consideration is, whether the consequence of established fraud, as repeatedly declared by this Court, can be ignored, to do complete justice in a matter, in exercise of jurisdiction vested in this Court, under Article 142 of the Constitution. And also, whether the consequences of fraud, can be overlooked in the facts and circumstances of this case, in order to render complete justice to the appellants?

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85. This Court, while dealing with admissions during the years 2008 to 2012, followed the earlier judgment, wherein admissions to the MBBS course during the year 2013, were annulled. The High Court in all the matters, consistently upheld, the cancellation orders passed by Vyapam. This Court also reiterated, the validity of the orders passed by the High Court, and thereby, upheld the Vyapam orders. In the above view of the matter, the factual and the legal position, with reference to the admission of the appellants, to the MBBS course being vitiated, has attained

> finality. The fact that the appellants, had gained admission to the MBBS course, by established fraud, does not (as it indeed, cannot) require any further consideration.
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> 86. In view of the sequence of facts narrated above, it is not possible for us to accept, that the deception and deceit, adopted by the appellants, was a simple affair, which can be overlooked. In fact, admission of the appellants to the MBBS course, was the outcome of a well orchestrated strategy of deceit and deception. And therefore, it is not possible to accept that the involvement of the appellants was not serious. In fact, it was indeed the most grave and extreme, as discussed above.
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> 87. In the above view of the matter, it is not possible for us, to overlook the consequences of the declared legal position, with reference to the consequence of fraud, on the ground that the involvement of the appellants in the acts of fraud, was not serious."

16. All these judgments referred to by the learned counsel for the respondents-State are on the question of probity in the examination process and that copying in the examination to seek admission is not to be countenanced. It is also held that the principles of natural justice are not required to be followed in the cases of mass copying or large scale irregularities in the examination process.

17. In **Niharika Tiwari's** case (**supra**), again the result of Pre-medical Test was cancelled by the Professional Examination Board, which was entrusted with the duties to conduct examination though criminal investigations were pending. Similarly, in **Dharmendra Singh Shakya**'s case (**supra**) again the writ petitioners were rusticated from the MBBS course for the reason that they got admission by unfair means and through impersonation. The Court held that the fraudulent methods adopted to get admission, empowers the Authority concerned to cancel the admission. However, the present is a case where action has been taken on

the basis of the report of the STF, which report is relevant for criminal trial but for cancelling the eligibility certificate, the examining body is required to return a finding as to whether there is mass copying or other grave irregularities or a fraud which vitiates the entire process.

18. We find that the ratio of the above judgments is that no opportunity of hearing is warranted in the cases of mass copying or the fraud in the examination process before cancellation of the result. It is not a case where report of criminal investigating agency was made basis of cancellation of result. It was a report of the tabulators of Hanswadih Centre in the case of **Bihar School Examination Board (supra**), which became basis of returning a finding that it was a case of mass copying. In all the cases referred to by Mr. B.D. Singh, learned counsel for the State, action was taken by the examine body. We find that no opportunity of hearing is required to be given in these kinds of mass manipulations in the examination process. The decision to cancel examination is required to be taken by the examining body not only on the basis of report of investigation agency investigating a criminal offence but on the such documents and evidence, which are made available to the examining body. Such material can be the documents collected by the STF as well.

19. The Special Task Force has conducted the investigation and collected the material, which may prove an offence for which trial is stated to be pending. Such report is the basis of criminal trial against the accused persons who might have been charged in the said case. However, such facts, which are the basis of criminal trial, may also disclose civil wrong leading to

such action as may be warranted. If the examination process is tainted by fraud, no right can accrue to any person on the basis of fraudulent examination process. Nothing survives, if fraud is foundation of an action. But, the report of the STF by itself may not be sufficient to cancel the result as the Authority conducting the examination has to form its independent opinion on such evidence, as may be available to it including the documents and the conclusion drawn by the STF. We wish to add here that evidence is not the evidence in terms of Evidence Act, 1872, the provisions of which are applicable only to judicial proceedings. The examining body, when examines the fraud in conduct of examination, such authority is not discharging any judicial function. Since no independent inquiry has been conducted by the examining body, therefore, on the basis of the report of the STF, the eligibility certificate could not have been cancelled. In the present case, the report of the STF has been made the sole basis for cancellation of eligibility certificate though in the return filed, the State has given additional reasons to support the reasons for cancellation of eligibility certificate.

20. We find that reason of cancellation of result has to be arrived at by the examining body on information from whatever and whichever source is produced before it but the decision has to be of examining body. Therefore, the report of STF by itself cannot be a reason to cancel the eligibility certificate unless an inquiry was conducted by the examining body before cancellation of the eligibility certificate. Consequently, relying upon **Shishuvendra Singh Tomar**'s case (**supra**), the order of cancellation of eligibility certificate is set aside. The competent Authority i.e. the respondent No.3 is directed to pass a fresh order after conducting the inquiry in such

manner as it may deem appropriate and not necessarily by associating all or any of the candidates.

21. It may be noticed that on the basis of cancellation of eligibility certificate, an order of termination of services have been passed by certain employers. In all such cases, the termination orders will be subject to the inquiry which may be conducted by the respondent No.3. In case, the decision of respondent No.3 is favourable to the petitioners, the necessary consequences will follow including a decision in respect of back wages, as held by the Supreme Court in a judgment reported as **(1993) 4 SCC 727** (**Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others).** The Court held that copy of the enquiry report is required to be sent to the delinquent but the Court/Tribunal should ensure that a liberty is required to be given to the employee to show that how his/her case was prejudiced because of non-supply of the report. If, after hearing the parties, the Court comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court would not interfere with the order of punishment. The question as to whether the employee would be entitled to back wages and other benefits from the date of dismissal to the date of his reinstatement if ultimately ordered, should be left to be decided by the Authority in accordance with law after culmination of the proceedings and depending upon the final outcome. The Supreme Court passed the following order:-

> **"31**. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming

to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/ Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

22. Keeping in view the principles of law laid down in the said judgment, the Writ Petition No.751/2017, W.P.No.2334/2018, W.P.

No.3687/2018, W.P.No.8609/2018, W.P. No.8844/2018, W.P. No.9714/2018 and W.P. No.15310/2018 wherein the termination orders have been passed and W.P. No.6365/2018 (Rajesh Rajawat v. State of M.P. and others) wherein an order of punishment of reversion has been imposed, are **disposed of** with liberty to the Competent Authority to examine as to whether, the eligibility certificate granted to the petitioners is liable to be cancelled. If such an order is passed, the order of termination of the services would warrant no interference, but if the order is otherwise, the competent Authority may pass such order of reinstatement and back wages in accordance with law.

23. We further direct that the competent Authority shall take an appropriate decision preferably within three months to insure probity in the process of examination for the purpose of public employment so that faith of the people in the examination process is maintained.

24. With the aforesaid observations, all the writ petitions are **disposed of**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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