

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 5TH OF APRIL, 2024

WRIT PETITION NO.26613 OF 2021

BETWEEN:-

**ATUL MISHRA S/O SHRI J.P. MISHRA,
AGED ABOUT 49 YEARS, OCCUPATION:
ASSOCIATE PROFESSOR, NATIONAL
INSTITUTE OF TECHNICAL TEACHERS
TRAINING AND RESEARCH, BHOPAL, M.P.,
R/O H.NO.1, PRAGATI KUNJ, AWADHPURI,
BHEL, BHOPAL (MADHYA PRADESH)
462022**

... PETITIONER

***(BY SHRI SHASHANK SHEKHAR – SENIOR ADVOCATE
WITH SHRI SAMRESH KATARE - ADVOCATE)***

AND

**1. UNION OF INDIA THROUGH
SECRETARY, MINISTRY OF HUMAN
RESOURCES DEVELOPMENT,
DEPARTMENT OF HIGHER EDUCATION,
SHASTRI BHAWAN, NEW DELHI- 110001**

**2. BOARD OF GOVERNORS (BOG)
THROUGH ITS CHAIRMAN, NITTTR,
BHOPAL (MADHYA PRADESH) 462013**

**3. NATIONAL INSTITUTE OF TECHNICAL
TEACHERS TRAINING AND RESEARCH,
THROUGH DIRECTOR OFFICE AT
SHYAMLA HILLS, BHOPAL, DISTRICT
BHOPAL (MADHYA PRADESH) 462013**

4. C. THANGRAJ, DIRECTOR, NITTTR,
SHYAMLA HILLS, BHOPAL, DISTRICT
BHOPAL (MADHYA PRADESH) 462013

5. TECHNOCRATS INSTITUTE OF
TECHNOLOGY (MANAGEMENT
EDUCATION AND RESEARCH), ANAND
NAGAR, BHEL, OPPOSITE HATHAIKHEDA
DAM, BHOPAL (MADHYA PRADESH) 462021
THROUGH ITS DIRECTOR.

... RESPONDENTS

(BY SMT. KANAK GAHARWAR - ADVOCATE)

.....

Reserved on : 23.02.2024

Pronounced on : 05.04.2024

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This petition having been heard and reserved for orders, coming on for pronouncement this day, the court pronounced the following:

ORDER

By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 22.11.2021 (Annexure-P/18) whereby the order of his appointment has been recalled with immediate effect alleging that he obtained the appointment on the basis of a forged and false experience certificate.

2. The challenge is founded mainly on the ground that although initially the petitioner was appointed on probation for a period of two years and it was extended for a further period of one year, but even after extending the said period of probation, no order of confirmation was issued in favour of the petitioner and as such he completed almost eight years in service. Thereafter, a show cause notice was issued to the

petitioner on 23.04.2019 (Annexure-P/11) directing him to show cause and submit his explanation as to why disciplinary proceedings should not be initiated against him for submitting false and forged experience certificate. The petitioner was directed to submit written explanation within 15 days with a clear understanding that time is the essence of the show cause notice and failing to submit explanation within the given time shall be deemed that there exists no explanation and disciplinary proceeding shall be initiated *ex-parte*. Instead of submitting reply to the said show cause notice, the petitioner made several communications to the respondents demanding documents including the document relating to his experience etc. The last and the final communication was made by the petitioner with the authority on 25.11.2019 (Annexure-P/13). Even after granting opportunities, when no reply or rebuttal to the allegations made in the show cause notice was filed, finally the authority passed the impugned order recalling the order of appointment of the petitioner.

3. To resolve the controversy involved in the case, first of all it is appropriate to highlight the factual background and brief history of the case, which are as follows :

3.1 In response to an advertisement issued in the year 2013 for the post of Associate Professor (Vocational Education & Entrepreneurship Development) the petitioner submitted an application and participated in the selection process and got appointed and the order of appointment dated 17th January, 2014 (Annexure P/6) was also issued in his favour. The order of appointment contains a number of conditions including a specific condition i.e. Condition No.7, which reads as under:-

“7. The appointment can be terminated without assigning any reason on one month’s notice or in lieu thereof on payment of one month’s pay and allowances as admissible on the date of termination. The appointee can also resign the employment after giving a month’s notice.”

For the post on which the petitioner was appointed, the requisite qualification was five years experience in teaching/ training/ research/ industry. The petitioner submitted a certificate of experience dated 11.09.2005 (Annexure P/5) in which it is mentioned that he worked as Senior Assistant Professor & Training & Placement Officer in the institute known as Technocrats Institute of Technology for the period w.e.f. 7th September, 2004 to 14th November, 2005.

3.2 After joining the services, the petitioner performed his duties with all sincerity. Thereafter, a letter dated 10th March, 2016 (Annexure P/7) was issued to the petitioner by the department to fill in and submit a duly completed Probation Assessment Form for Faculty. The petitioner submitted the duly filled in Probation Assessment Form for Faculty. Afterwards, in response to a communication made by the department, a letter dated 11.01.2018 was written by the Director, Technocrates Institute of Technology, Bhopal to Dean Administration, National Institute of Technical Teachers Training & Research, Bhopal (NITTTR) intimating that information sought for vide letter dated 21.12.2017 with regard to verification of correctness of the experience certificate attached by the petitioner apprising that the certificate of experience issued in his favour, has not been issued by the institute and as such it was invalid. On 16th March, 2018 (Annexure P/9), in response to the said information, the Dean Administration wrote a letter to the petitioner

apprising him that not only the period of probation but appointment made during 2009-2014 are being examined by a Fact Finding Subcommittee of the Board of Governors (BoG). The petitioner thereafter vide letter dated 08.03.2018 (Annexure P/10) submitted his para-wise reply. Following the said reply, a show cause notice was also issued to the petitioner on 23.04.2019 (Annexure P/11). By the said show cause notice, the petitioner was asked to submit his explanation with regard to documentary proof/evidence and as to why the disciplinary proceedings should not be initiated against him as per rules and regulations for submitting false certificate. The petitioner was granted 15 days time to submit the reply with a clear understanding that the time is the essence of the show cause notice and no further extension of time under any pretext will be granted to submit his explanation.

3.3 From perusal of the record, it also reveals that a complaint dated 11.06.2019 (Annexure P/12) was made by the petitioner against the respondent No. 4 to establish as to how he was acting against the petitioner with mala fide intentions to harass him. The petitioner also wrote a letter to the respondents demanding documents so that he could submit his point-wise reply to show cause notice issued to him. When nothing was done and petitioner was not supplied the respective documents, he filed a writ petition, which was registered as WP No. 15466/2019 and got disposed of vide order dated 05.08.2019 (Annexure P/14) directing respondents to consider and decide the representation of the petitioner within a period of six weeks in the light of the order passed in WP No. 5802/2018. Thereafter, the petitioner again submitted a representation to the respondents alongwith copy of the order passed

in WP No. 15466/2019. The said representation of the petitioner was rejected vide communication dated 24.05.2021 (Annexure P/16) informing him that as per the direction given in WP No. 5802/2016-Dr. Kamal Bunkar vs. The State of Madhya Pradesh, his case is altogether different from the case of Dr. Kamal Bunkar and therefore parity cannot be drawn in the case of the petitioner as in the case of the petitioner appointment is being investigated by a Fact Finding Sub-committee (FFSC) appointed by the Board of Governors to investigate all appointments made during 2009-2014 based on CAG Audit report and Departmental Promotion Committee observation and a final decision will be taken only as per the Board of Governors decision/direction based on the FFSC report. Afterwards, the petitioner again filed a writ petition, which was registered as WP No. 22305/2021 wherein the petitioner claimed payment of annual increment and also clearance of probation period as he had completed more than seven years in service. Finally, since the documents submitted by the petitioner were found to be false and fabricated, therefore rendering the said documents *void ab initio*, by order dated 22.11.2021 (Annexure P/18), the order of appointment of the petitioner dated 17th January, 2014 was recalled and he was asked to refund the wages drawn by him for the period 17th January, 2014 (AN) to date.

4. The respondents have submitted their reply taking stand therein that the Departmental Promotion Committee (DPC) held on 16.01.2017 communicated serious lapses like roster violation, relaxation in age and others and recommended to examine all cases of recruitment made during 2009-2014. There were several complaints received against the

appointments including the complaint to Vigilance Department and CBI. Thereafter, Comptroller and Auditor General of India (CAG) was also Constituted by the CVC to investigate into the matter. The matter was thereafter placed before the Board of Governors. The Board of Governors constituted a committee to conduct a fact finding investigation in regard to appointments made during the period July, 2009 to August, 2014. The committee was advised to submit a report on an individual basis. The reports were placed before the Board of Governors for consideration on 28.06.2021, who resolved to take appropriate action against the irregularities and illegal appointments. The respondents have filed the said document i.e. resolution of the Board of Governors dated 12.08.2021 as Annexure R/1. The respondents have also taken a stand in the reply that the document i.e. experience certificate submitted by the petitioner got verified and as per the information conveyed vide letter dated 24.07.2020 by the Director, Technocrats Institute of Technology, the said experience certificate dated 30.11.2005 issued to Dr. Atul Mishra (petitioner) by Professor K.M. Pandey as Director on letterhead of TIT-MBA, was not issued by the said institute. It has also been clarified in the said letter that the petitioner worked in the institute for around 2-3 months in the year 2004-05. It has also been informed by the said letter that the institute does not have any record of salary paid, income tax deduction etc. of Dr. Atul Mishra (petitioner). The respondents have also filed a certificate showing that the petitioner was working as Placement Officer in the Times Institute of Management and Engineering Studies, Rewa from February, 2001 to June, 2004 and he also worked in the same institute as Senior Lecturer-cum-Training and Placement Officer from February,

2001 to June, 2004. The respondents have filed several documents showing that despite consistent communications, the petitioner has not submitted any reply to the show cause notice and he was avoiding reply by demanding documents unnecessarily. The respondents submitted that even after granting last opportunity to submit reply vide letter dated 21st May, 2019 giving seven days time, the petitioner did not file any reply. As per the respondents, the petitioner adopted dilatory tactics by repeatedly requesting for certified copy of the documents submitted by him knowing fully well that the originals were in his possession and he had submitted copies thereof. Finally, the respondents came to the conclusion that the certificate submitted by the petitioner about his experience to fulfill the essential qualification was false and as such his appointment was found to be illegal as the same was obtained by him by committing fraud with the respondents. Consequently, not only the appointment of the petitioner was recalled but the wages paid to him during the period he rendered services on the basis of false appointment was also directed to be recovered.

5. Counsel for the petitioner has challenged the said order of the authority on the ground of competency saying that the order was issued by an incompetent authority. According to him, the order could have been issued by the Board of Governors but there is no order by the Board of Governors and it has been issued by an incompetent authority. The impugned order has also been assailed on the ground that it is a stigmatic order because it alleges misconduct against the petitioner and as such, regular departmental enquiry was required to be conducted before terminating the petitioner from service, but according to learned

counsel, no regular disciplinary proceeding/enquiry was initiated and only on the basis of show cause issued to the petitioner, the impugned order has been passed. It is also contended by the learned counsel for the petitioner that from the order impugned, it can be easily gathered that the respondents have recalled their original decision of appointing the petitioner that too after such a long lapse of time. He has submitted that there is no provision under which the respondents can recall the order of appointment and therefore, the impugned order itself is illegal and not sustainable in the eyes of law and as such deserves to be set aside. In support of his contention, learned counsel has placed reliance upon judgment reported in **2009 SCC OnLine Del 2345-Mangal Singh vs. Chairman, National Research Development Corporation & Ors.** He has also relied upon the judgments rendered in the cases of **Suresh Sharma And Anr. vs. State of M.P.-WP No. 22257/2021**, **Chakresh Patel vs. State of Madhya Pradesh-WP No. 2594/2016**, **V.P. Ahuja vs. State of Punjab and others** reported in (2000) 3 SCC 239, **Samsher Singh vs. State of Punjab** reported in (1947) 2 SCC 831, **Paramjit Singh Sandhu & others vs. Ram Rakha & others** reported in (1979) 3 SCC 478.

6. To counter the contentions raised by the counsel for the petitioner, counsel for the respondents has submitted that the show cause notice issued to the petitioner is very exhaustive and explanatory indicating as to what illegality has been committed by him. She has submitted that despite giving sufficient time to the petitioner, no reply to the said show cause was filed by him. She has further submitted that due to non-filing of reply to the show cause, the authority was free to take

decision assuming that the petitioner did not have any proper explanation to the allegations made in the show cause notice and as such, no enquiry was required to be conducted. She has submitted that under such circumstances, the authority has rightly passed the order of recalling the order of appointment. She has further submitted that the order has been issued by the competent authority i.e. Director & Member Secretary, BoG, NITTTR, Bhopal on the basis of the decision taken by the Board of Governors vide its resolution dated 28th June, 2021 (Annexure-R/1). She has submitted that since petitioner was a probationer and committed fraud upon the authority, therefore, no regular departmental enquiry was required to be conducted and the provisions of Article 311 of the Constitution, are not attracted reason being it is a settled principle of law that if a person gets an order/office by misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of law and all the proceedings and actions initiated on the basis of the said fraud would automatically vitiate and go. She has further submitted that there is no specific denial of fraud by the petitioner, therefore, enquiry was not required to be conducted against him and the action of the authority cannot be set aside only on this count. She has also submitted that the impugned order cannot be said to be an order of review. She has submitted that if overall facts and circumstances are taken into consideration, it would be explicitly clear that the appointment order of the petitioner has been recalled by the authority on the ground that the same was obtained by the petitioner by committing fraud upon the competent authority and intrinsically the appointment of the petitioner was *void ab initio*. In support of her contention, learned counsel has also placed reliance upon

catena of judgments rendered in the cases of **Meghmala & others vs. G.Narasimha Reddy & others** reported in (2010) 8 SCC 383, **Devendra Kumar vs. State of Uttaranchal and others** reported in (2013) 9 SCC 363, **District Primary School Council, West Bengal vs. Mritunjoy Das and others** reported in (2011) SCC 111, **State of Chhattisgarh and others vs. Dhirjo Kumar Sengar** reported in (2009) 13 SCC 600, **Superintendent of Post Offices and others vs. R. Valasina Babu** reported in (2007) 2 SCC 335 and **Parul vs. Uttar Haryana Bijli Vitran Nigam Limited and another** reported in 2023 SCC OnLine P & H 900.

7. After having given my thoughtful consideration to the arguments advanced by the learned counsel for the parties on the issue and after perusal of record, the following questions emerge to be answered:

(i) Whether the order passed by the respondents, which is impugned in this petition, terminating the services of the petitioner, is by a competent authority or not?

(ii) Whether the order of termination is stigmatic on the basis of alleged misconduct committed by the petitioner and can be issued without conducting a regular departmental enquiry or not?

(iii) Whether the impugned order issued by the authority can be considered to be an order reviewing its earlier decision whereas there is no provision available with the respondents to exercise the power of review and as such the impugned order can be held illegal or not?

8. The first question to be answered by this Court is about the competency of the authority who passed the impugned order.

8.1 The respondents have submitted a resolution of Board of Governors dated 28th June, 2021 (Annexure R/1) in which the BOG resolved in the following manner:

“Correction of JS. Mr. Madhu Ranjan Kumar:

W.r.t. item number 151.5.02, the decision was the following:

1. Wherever candidates have been recruited by submission of fake/false/contradictory experience certificate; or by non-compliance of reservation roster, or by relaxing experience/ considering visiting and guest faculty experience, appointments made in position not advertised, framing of qualification after receipt of application, violation of scrutiny committee recommendations, allowed to join one year after the constitution of the selection panel, their services must be terminated forthwith. For giving a higher grade pay and additional increment, it can at the best be a case of recovery, so termination is not warranted. For applications received after last date of advertisement, positions filled more than advertised posts and appointments made without sanctioned/vacant positions, case should be sent to MoE. For sr. no. 10, if reqd procedure were followed, it is not an issue.

2. Further, Director will send a self contained note to MoE about these irregular appointments so that the matter can be referred to CBI for a through enquiry.”

The above decision of the Board of Governors decidedly indicates that a decision was taken to terminate the service of the candidate if the appointment was obtained on the basis of fake and false experience certificate. In response to the decision taken by the BOG, since it was

found that the appointment of the petitioner was on the basis of false experience certificate, the said appointment was recalled by the Director & Member Secretary, BoG, NITTTR, Bhopal and as such it was not a decision of reviewing earlier decision of appointment, but it was otherwise cancellation of appointment, which was made in favour of the petitioner. Thus, in my opinion, the decision taken by the respondents cannot be said to be by an incompetent authority.

8.2 So far as question No.(ii) framed by this Court with regard to conducting a regular departmental enquiry is concerned, I am of the opinion that it is a case of fraud committed by the petitioner to obtain appointment. A show cause notice was issued to the petitioner asking him to submit his explanation about the communication made by the institute where he worked and obtained an experience certificate for the same but that institute denied about issuance of any such experience certificate. The petitioner did not submit any reply to the said show cause notice and failed to produce any document justifying his experience certificate on the basis of which he obtained the appointment. On the contrary, the petitioner was asking certified copy of the said certificate which he filed at the time of getting appointment, but he did not show the original certificate of experience to the authority and even before this Court he failed to produce any such document. The petitioner could have submitted a certificate in rebuttal to the letter issued by the institute showing that the said certificate was not issued by the said institute. If that communication and information was incorrect, it was the duty and responsibility of the petitioner to submit any document in rebuttal to the said document so as to

substantiate that the said communication was not genuine, but nothing was done and even before this Court no document was produced by the petitioner so as to make the document relied upon by the respondents doubtful. Accordingly, in my opinion, when the petitioner was not a confirmed employee, he was under probation and his appointment was admittedly under investigation and *prima-facie* the allegation against him was about obtaining appointment by fraud and submitting fake and false document, no regular enquiry was required. It is not a case of termination on the ground of misconduct, but it is a case of cancellation of appointment, as the same was obtained by committing fraud and hence under the existing circumstances the petitioner was provided opportunities to substantiate that the certificate on the basis of which he obtained appointment was genuine and allegation about its correctness was not proper, but nothing was done by the petitioner to rebut the said allegation and on the contrary he adopted dilatory tactics just to show that he was not granted proper opportunity although that could have been done by him by submitting original documents before the authority and even before this Court. Therefore, in view of the aforesaid, it is clear that the certificate of experience produced by petitioner cannot be said to be a valid document.

8.3 At the last, this Court has to answer the third question framed with regard to reviewing the earlier decision by the respondents whereas there is no provision available with them to exercise the power of review. Considering the facts and circumstances of the case and also the documents available on record in totality, this Court is of the

considered opinion that the authority, which has given appointment, has every right to recall that order, if ultimately it is found that the same has been obtained by committing fraud because the fraud vitiates all subsequent actions and any order obtained by fraud is considered to be *void ab initio* and that mistake can be corrected by the authority at any time. The respondents had all the authority to cancel the appointment of the petitioner, if they found that the same was obtained fraudulently. Thus, this court is of the opinion that cancelling the appointment earlier made cannot be considered to be an order of review, although, according to the petitioner, the power of review cannot be exercised unless it is specifically provided in the rules, but in the opinion of this Court, the submission made in this regard by the learned counsel for the petitioner is absolutely misconceived and not sustainable in the eyes of law. Consequent upon the aforesaid observation, the action of the respondents cannot be said to be without any competence.

9. Although by answering the questions framed, this Court has reached to a compact conclusion that the impugned order passed by the authority recalling the appointment order of the petitioner is just and proper, but since learned counsel for the parties have placed reliance upon several decisions rendered by the Supreme Court and also by the High Courts to justify their stand, the said decisions are also taken note of for just and proper adjudication of the case.

10. To bring the case of the petitioner within the zone of consideration although the counsel for the petitioner has made earnest attempt by placing reliance upon the judgment of **Mangal Singh (supra)** in which

the Court observed that the order of discharge or dismissal of a temporary employee, if attaching a stigma, cannot be passed without conducting a full-fledged departmental enquiry and without complying with the requirement of Article 311 of the Constitution, but in my opinion, the facts of the said case are altogether different from the facts of the present case. In the said case, no opportunity was granted to a temporary employee before dismissal of his service, but here in this case the petitioner was given an opportunity by issuing a show cause notice to submit his explanation but he did not file any reply to the said show cause notice and did not even submit any explanation to allegations made against him and only thereafter finding no option, the decision was taken by the authority to recall the order of appointment. It is not a case of dismissal from service but it is a case of recalling the order of appointment as the same was obtained by fraud. It is also not a case in which no opportunity was granted to the petitioner to submit his stand whereas from the observation made by the Delhi High Court in case of **Mangal Singh (supra)** it is clear that the petitioner of the said case was not granted any opportunity of hearing, as has been observed by the Delhi High Court in paragraph 26 of its judgment, which reads as under:

“26. In the light of the discussion above, in my opinion, the Petitioner was dismissed without affording him the opportunity of presenting his case before the disciplinary authority, thereby violating the protection guaranteed to temporary servants under Article 311(2) of the Constitution of India. Further, the order of termination was not a discharge simplicitor but a dismissal, and was stigmatic and punitive in character. Also, the misconduct of the Petitioner was the foundation of the order of termination and not

merely the motive. Resultantly, the impugned order of termination is held to be stigmatic and punitive and not sustainable. I, therefore, allow this petition and set aside the impugned orders dated 4th of June, 2004 and the consequent order in appeal dated the 1st of December, 2006 passed by the Respondent-Corporation. The Respondents are directed to reinstate the Petitioner, with all consequential benefits. This, however, will not prevent the Respondents from taking action in accordance with law.”

Thus, considering the aforesaid, in my opinion, the case on which the petitioner has placed reliance will not help him.

11. The petitioner has also placed reliance upon the judgments rendered in the cases of **Suresh Sharma And Anr. vs. State of M.P.- WP No. 22257/2021**, **Chakresh Patel vs. State of Madhya Pradesh- WP No. 2594/2016**, **V.P. Ahuja vs. State of Punjab and others** reported in (2000) 3 SCC 239, **Samsher Singh vs. State of Punjab** reported in (1947) 2 SCC 831, **Paramjit Singh Sandhu & others vs. Ram Rakha & others** reported in (1979) 3 SCC 478, however in all the cases no opportunity was provided to the employee before terminating services and the case of the present petitioner is altogether different from the cases cited hereinabove. The present case is a case of probationer and his appointment was cancelled only on the ground that he obtained the appointment by committing a fraud.

12. In contrast to the above, counsel for the respondents has also relied upon several decisions rendered in the cases referred herein above.

In re Meghmala (suspra) the Supreme Court observed as under:

“It is a settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law. Fraud and justice never dwell together (*fraus et. Jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all the secenturies. The ration laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud.”

In re Devendra Kumar (supra), the Supreme Court observed as under:-

“It is settled proposition of law that where an applicant gets an order by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. “Fraud avoids all judicial acts, ecclesiastical or temporal”

In re District Primary School Council (supra), the Supreme Court while dealing with the fraud to get appointment observed as under :-

“9. On going through the records placed before us, what we find is that the contesting respondents herein inflated their marks in order to obtain admission in the Primary Teacher's Training Institute. Had the marks not been inflated in the aforesaid manner, the contesting respondents would not have got the admission in that particular Institute as it is disclosed from the records. Therefore, the admission sought for was through an illegal means which is to be deprecated. The conduct of the contesting respondents being such, we cannot find fault with the course of action taken by the appellant herein. It is not that the contesting respondents were not given any opportunity of hearing. They were given a show-cause notice and were also given an opportunity of hearing which

opportunity they did not accept although they submitted a reply to the show-cause notice. There is, therefore, no violation of the principles of natural justice in the present case. If a particular act is fraudulent, any consequential order to such fraudulent act or conduct is non est and void ab initio and, therefore, we cannot find any fault with the action of the appellant in dismissing the service of the contesting respondents. In this context we refer to the decision of this Court in *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311] for the proposition that no person should be allowed to keep an advantage which he has obtained by fraud.”

In re State of Chhattisgarh (supra) also while dealing with a case of fraud to obtain appointment, the Supreme Court observed as under:-

“**18.** Legality of grant of a valid appointment was dependent upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar. He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an authority which was lower in rank than the Joint Director viz. the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practised on the Department, he could, in our opinion, cancel the same.

19. The respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the

principles of natural justice were not required to be complied with.”

In re Superintendent of Post Offices (supra) the Supreme Court dealt with the situation when appointment was obtained by committing fraud and later the said appointment was cancelled. The Supreme Court observed as under:

“Equality clauses contained in Articles 14 and 16 of the Constitution, envisage that all the citizens of India shall get an opportunity to be considered for appointment in all the civil posts. Clause (4) of Article 16, however, provides for an exception. When a public employment is obtained in a vacancy reserved for a particular category of candidate, he must fulfill the criteria laid down therefor. When the vacancy was to be filled by a Scheduled Caste or Scheduled Tribe candidate for whom the post was created, the candidate must be one who belongs to that category. If the selectee does not fulfill the said basic criteria, his appointment cannot be allowed to be continued. Once the certification the basis whereof the respondent obtained employment stood cancelled, no question of allowing him to continue in service would arise, if he had been appointed on the basis of such a certificate. If the employee concerned had played fraud in obtaining an appointment, he should not be allowed to get the benefits thereof, as the foundation of appointment collapses.”

In re Parul , the Supreme Court observed as under:-

“12. From a perusal of the aforesaid facts and circumstances, it is evident that the appellant sought to seek appointment on the post of Lower Divisional Clerk on the strength of a false ‘O’ Level certificate and, therefore, attempted to obtain appointment by playing a fraud. It is settled law that where any benefit is obtained by a person by playing fraud then such benefit cannot be sustained in the eyes of law as fraud vitiates everything. The Supreme Court

in *Meghmala v. G. Narasimha Reddy*, [\(2010\) 8 SCC 383](#), while laying down the consequences of fraud by a party, has held as under:

“28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. “Fraud avoids all judicial acts ecclesiastical or temporal.” (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. [\(1994\) 1 SCC 1 : AIR 1994 SC 853](#)). In *Lazarus Estate Ltd. v. Besalay* [1956] All ER 349), the Court observed without equivocation that “no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.”

29. In *Andhra Pradesh State Financial Corporation v. M/s. GAR Re-Rolling Mills* [\(1994\) 2 SCC 647 : AIR 1994 SC 2151](#); and *State of Maharashtra v. Prabhu* [\(1994\) 2 SCC 481](#), this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. “Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.”

30. In *Smt. Shrisht Dhawan v. M/s. Shaw Brothers*. [\(1992\) 1 SCC 534 : AIR 1992 SC 1555](#), it has been held as under:—

“20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.”

31. In *United India Insurance Co. Ltd. v. Rajendra Singh* [\(2000\) 3 SCC 581 : AIR](#)

2000 SC 1165, this Court observed that “Fraud and justice never dwell together” (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India v. M. Bhaskaran 1995 Supp (4) SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan v. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company (2007) 8 SCC 110 : AIR 2007 SC 2798; and Mohammed Ibrahim v. State of Bihar (2009) 8 SCC 751).

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression “fraud” involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla v. Delhi Administration AIR 1963 SC 1572; Indian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh v. T. Suryachandra Rao (2005) 6 SCC 149 : AIR 2005 SC 3110; K.D. Sharma v. Steel Authority of India Ltd. (2008) 12 SCC 481; and Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir (2008) 13 SCC 170).”

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18. When the facts of the instant case are examined in the light of the aforesaid law laid down by the Supreme Court, it is evident that no fault can be found with the act of the authorities in terminating the services of the appellant, and the decision of the learned Single Judge, as undisputedly the appellant sought to obtain appointment by producing a fraudulent document. In such circumstances, as fraud renders the appointment itself *void ab initio* and *non est*, and the act of the appellant renders her ineligible for being considered for appointment, the contention of the learned counsel for the appellant that this act of fraud on the part of the appellant be ignored and overlooked, and she be granted appointment on the strength of the fact that she possessed the necessary qualification for appointment, is misconceived. The action that has been taken against the appellant has been taken on account of fraud committed by the appellant and, therefore, the question of her being eligible or otherwise does not arise as her attempt to obtain appointment by playing fraud disentitles her to be considered for appointment or to claim appointment.

19. It would be travesty of justice to force the respondents to retain a person like the appellant in service when they have lost all faith and trust in her on account of the fraud committed by her. The appellant cannot invoke or claim any relief even on account of equity and sympathy because of her act of fraud.”

13. Conclusively, considering the factual position of the case at Bar, as discussed exhaustively hereinabove, the answers to the questions framed by this Court and taking note of the legal position on the issue as has been settled by the Supreme Court observing that the dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and the court should not perpetuate the fraud by entertaining petitions on their behalf and that the fraud and justice never dwell together, this Court has even no slight hesitation to say that this petition is misconceived and deserves to be dismissed. Accordingly, this petition fails and is hereby dismissed.

14. So far as refund of wages drawn for the period 17th January, 2014 (AN) to date by the petitioner is concerned, since he duly performed his duties on the post concerned for the said period, the said part of the impugned order dated 22.11.2021 (Annexure P/18) is set aside and as such, no recovery of the wages already paid to the petitioner shall be done from him, however remaining part of the impugned order shall remain intact.

**(SANJAY DWIVEDI)
JUDGE**