

20. Costs easy.

(2024) 11 ILRA 43

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 13.11.2024

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 17117 of 2024

Saurabh Srivastava ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Rahul Mishra, Saroj Kumar Yadav, Vikram Bahadur Singh

Counsel for the Respondents:

C.S.C., Hare Ram

A. Service Law - Transfer Policy - Principle of "Last Come First Go" – Classification of Teachers on Basis of Length of Service - Constitution of India, Art. 14 - Test of Reasonable Classification under Article 14 - U.P. Basic Education (Teachers) Service Rules, 1981 - U.P. Basic Education Teachers Service Regulations, 1981 - Right to Education Act, 2009 - U.P. Right of Children to Free and Compulsory Education Rules, 2011 – Clauses 3, 7, 8, & 9 of the Government Order dated 26.06.2024 issued by the Basic Education was challenged. Clause 3 provided that surplus teachers as per the bench mark of the pupil-teacher ratio are to be shifted to schools where such bench mark remains unfulfilled. Clause 7 provides that transfer of teachers would be under the principle of "last come first go" whereby the junior most teacher would be shifted out first. Clauses were challenged on the ground that it would entail frequent transfers of junior teachers while maintaining senior teachers in the same school for years together. *Held:* Impugned clauses of the G.O. do not indicate any reasoning as to

why the aforesaid principle is required to be followed for transfer/adjustment of teachers. By introducing such a concept, a classification has been made pertaining to those teachers who have been posted in a particular school longer than others who have been posted there subsequently. If the aforesaid procedure prescribed under the impugned clauses is kept intact, it would entail frequent transfer of junior teachers while keeping intact the posting of senior teachers for all times to come since a teacher after transfer and joining in another district would ipso facto remain a junior. No intelligible differentia has been indicated either in the Government Order, the circular or even in the counter affidavit. Procedure for "last in first out" also does not appear to have any rational nexus with the object sought to be achieved by the Act of 2009 and the Rules framed thereunder. Court found the classification to be discriminatory and failing the test of reasonable classification. (Para 57, 58, 59)

B. Civil Law - Service Law - U.P. Basic Education (Teachers) Service Rules, 1981 – Clauses 3, of the G.O. dated 26.06.2024 – Inclusion of Shiksha Mitra in Parity with Assistant Teachers Impermissible under Service Rules – Clause 3 of the Government Order, which provides for transfer or adjustment by considering the number of Shiksha Mitra employed in a particular school, for determination of Pupil-Teacher Ratio is contrary to the Service Rules of 1981. Qualifications required for appointment as an Assistant Teacher are not applicable to Shiksha Mitras, and therefore, the Government Order clearly erred in equating the two. Inclusion of Shiksha Mitra in parity with Assistant Teachers is impermissible, as executive orders can only supplement statutory provisions but cannot supplant or override them. Evidently, unequals have been treated as equals. (61, 62, 63)

Dismissed. (E-5)

List of Cases cited:

1. Smt. Reena Singh Vs St. of U.P. & ors., writ petition No. 25238 (S/S) of 2018

(Delivered by Hon'ble Ajay Bhanot, J.)

2. Govind Kausik & ors. Vs St. of U.P. & ors., Writ A No.10686 of 2024

1. Shri Rahul Mishra and Shri Vikram Bahadur Singh, learned counsel for the petitioner, Sri Hare Ram, learned counsel for the BSA and Ms. Shruti Malviya, learned brief holder on behalf of the State.

3. Neerja & ors. Vs St. of U.P. & ors., Writ A No.9970 of 2024

2. By the impugned order dated 04.10.2024, the appointment of the petitioner has been cancelled on the footing that his educational testimonials/certificates pertaining to the TET Examination were found to be forged.

4. Jitendra Singh Rajput & anr. Vs St. of U.P. & ors., Writ A No.11049 of 2024

5. Sarita Rani & ors. Vs St. of U.P. & ors., Writ A No.19345 of 2018

6. U. P. Gram Panchayat Adhikari Sangh & ors. Vs Daya Ram Saroj & ors., (2007) 2 SCC 138

7. Mary Pushpam Vs Televi Curusunary & ors. , Civil Appeal No.9941 of 2016

8. Pandit M.S.M. Sharma Vs Dr. Shri Krishan Sinha & ors. AIR 1960 SC 1186,

9. Charanjit Lal Vs Union of India AIR 38 SCC 1951

10. U.O.I. Vs Alphinstone Shipping and Weaving Comp. Ltd. 2001 Vol.1.-IV SCC 139 a

11. St. of Uttaranchal Vs Sandeep Kumar Singh & ors., (2010) 12 SCC 794

12. St. of M.P. Vs Narmada Bachao Andolan & anr., (2011) 7 SCC 639

13. Kalyan Chandra Sarkar Vs Rajesh Ranjan @ Pappu Yadav & anr., (2005) 2 SCC 42

14. Bilkis Yakub Rasool Vs U.O.I., (2024) 5 SCC 481

15. Census Commissioner & ors. Vs R. Krishnamurthy, (2015) 2 SCC 796

16. Ramesh Chandra Sharma & ors. Vs St. of U.P. & ors., (2024) 5 SCC 217

17. Association for Democratic Reforms and Another (Electoral Bond Scheme) Vs U.O.I. & ors., (2024) 5 SCC 1

18. Amarendra Kumar Mohapatra Vs St. of Orissa & ors. (2014) 4 SCC 583

3. The petitioner was noticed by order dated 27.04.2024 that his educational certificates of TET were found to be forged. A report from the Board of the High School and Intermediate Education dated 02.09.2020 which had purportedly issued the said certificate had recorded that the petitioner had failed in the TET Examination. The documents adverse to the petitioner including the report of the Board of High School and Intermediate Education were served upon the petitioner along with the show cause notice. The petitioner in response to the show cause notice acknowledged the receipt of the aforesaid report issued by the Board of High School and Intermediate Education dated 02.09.2020. The reply to the show cause notice by the petitioner adverts to certain disputes in the TET-2011 Examination results. The petitioner has also stated that the actual results of the petitioner can be determined if his answer sheets are summoned and evaluated by the employer.

4. The response of the petitioner did not find favour with the authority and hence the impugned order. The impugned order adverts to the report sent by the Board of High School and Intermediate

Education dated 02.09.2020 along with other relied on documents and finds that the TET certificate of the petitioner was forged. The appointment of the petitioner was vitiated by the fraud and accordingly his services were terminated.

5. The natural justice cannot be cast in a strait-jacket formula. The principles of natural justice are applied with a view to the facts of a particular case. In the instant case, the petitioner was put to notice on the charges of fraudulent educational certificates against him. The documents adverse to the petitioner and proposed to be relied upon by the respondent-department were duly served upon him. The petitioner was given an opportunity to reply to the show cause notice. The petitioner as tendered his defence to the charges enumerated in the show cause notice. The aforesaid reply submitted by the petitioner was duly considered in the impugned order. One of the tests of proper application of the principles of natural justice is whether any prejudice has been caused to the noticee by the procedure adopted by the disciplinary authority. No prejudice was caused to the petitioner by the procedure adopted by the authority. In the facts of this case, principles of natural justice has been duly complied with. The impugned order is supported with reasons & there is no perversity in the same.

6. The question now arises as to whether a regular departmental enquiry ought to have been conducted in the facts of this case. The applicability of the UP Government Servant Discipline and Appeal Rules, 1999 for the purposes of holding a regular departmental enquiry in similar facts fell for consideration before a learned Division Bench of this Court in **District Basic Education Officer and another vs. Punita Singh and others. 1**

7. In the case of **Punita Singh (supra)**, the services of the petitioner were terminated on the footing that her educational certificates were forged and fabricated. The question arose whether in these facts, the issuance of show cause notice and compliance of broad principles of natural justice were sufficient to meet the ends of justice or it was imperative to hold a regular departmental enquiry. In this context, while considering the applicability of Rules, 1999, the learned Division Bench of this Court held :

"16. From the above determination, it is apparent that the University has categorically indicated that the documents relied on by the respondent for seeking employment were totally forged and fabricated. Neither before the learned Single Judge nor before this Court any attempt has been made to negate the finding recorded about the eligibility/qualification documents being forged and fabricated.

17. The learned Single Judge allowed the writ petition only on the ground that termination of employment amounts to imposing major penalty and the same could not have been imposed without holding inquiry under Rules of 1973/Rules of 1999.

*18. A Division Bench of this Court in **Zila Basic Shiksha Adhikari, Balrampur Vs. Anand Kumar Tripathi and others : 2024:AHC-LKO:37313-DB**, in a case where compassionate appointment accorded to the respondent therein, was terminated on account of failure to produce relevant documents as regard his parentage, etc., the Division Bench, on the question whether in such case show cause notice should be issued and thereafter order of cancellation of appointment should be passed or a full*

*fledged inquiry in terms of Rules of 1999 should be held followed by removal or dismissal, came to the conclusion that disciplinary proceedings are ordinarily initiated if any misconduct has been committed after joining service, therefore, if the initial appointment itself was fraudulent, then referring to the judgment of Hon'ble Supreme Court in **R. Vishwanatha Pillai Vs. State of Kerala and others : (2004) 2 SCC 105, and Patna High Court judgements in Ishwar Dayal Sah Vs. State of Bihar : 1987 Lab IC390 and Rita Mishra Vs. Director, Primary Education : 1988 Lab IC 907, came to the following conclusion:***

"12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in the aforesaid decision of the Supreme Court.

13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary

proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed."

*19. Recently, Hon'ble Supreme Court in **Union of India Vs. Prohlad Guha etc.: 2024 SCC OnLine SC 1865**, in a case where the writ petitions filed by the employees were allowed for not following the Railway Servants (Discipline & Appeal) Rules, 1968 and on coming to the conclusion that qua a person in regular service, the dismissal cannot take place sans any disciplinary inquiry, while setting aside the judgement, came to the following conclusion:*

*"13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in **Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers** observed –*

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or

public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. ...From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

.....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a Section on existence or non-existence of which power can be exercised.

*13.1. The words of Denning L.J. in **Lazarus Estates Ltd. v. Beasley** are of importance qua the impact of fraud. He wrote –*

".....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage 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 judgment, contract and all transactions whatsoever...."

*13.2. 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; **Derry v. Peek; Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education**]*

*13.3 In **R. Vishwanatha Pillai v. State of Kerala**, a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.*

14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their

eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (*supra*) answers the question. The Respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in *Devendra Kumar v. State of Uttaranchal*. In paragraph 25 thereof it was observed –

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (*Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056].*) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)."

(Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the Respondent-employees' Original Applications is restored. The Respondent- employees were rightly dismissed from service by the Appellant-employer."

20. From the above, it is well established that in case, the employment has

been obtained based on fraudulent documents, the beneficiary of such fraud cannot seek that procedure prescribed under the Rules of 1999 must be followed.

21. So far as the judgment in the case of *Smt. Parmi Maurya (supra)* relied on by counsel for the respondent is concerned, it was a case where the Division Bench came to the conclusion that petitioner therein, was not afforded adequate opportunity of hearing. However, in the present case, it is *ex facie* clear from the order impugned that she was provided adequate opportunity with regard to her documents being forged and fabricated and the only plea raised by her was that she would produce duplicate copies of the said documents and neither in the writ petition nor in the present appeal, she has been able to produce any further document/material to substantiate that the mark-sheets issued to her, were not forged and fabricated. "

8. The case at hand is squarely covered by the law laid down in **Punita (supra)**.

9. In the wake of preceding discussion, there is no infirmity in the procedure adopted by the respondents while passing the impugned order and the impugned order is lawful and just. The writ petition is liable to be dismissed and is **dismissed**.

(2024) 11 ILRA 48

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 20.11.2024

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 24901 of 2021

Km. Farha

...Petitioner

Versus

State of U.P. & Ors.

...Respondents