

Nagendra Kumar vs State Of Up And 7 Others on 1 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44192

Court No. - 49

Reserved

A.F.R.

Case :- WRIT - A No. - 12070 of 2024

Petitioner :- Nagendra Kumar

Respondent :- State of U.P. and others

Counsel for Petitioner :- Abhinav Tripathi, Prashant Shukla

Counsel for Respondent :- C.S.C., Siddharth Singhal

Hon'ble J.J. Munir, J.

1. This writ petition is directed against an order of the Director, Internal Account and Audit, Directorate, U.P. dated 22.12.2023, cancelling the petitioner's appointment as an Assistant Accountant. Also under challenge is an order dated 20.10.2023 passed by the Director aforesaid, where pending proceedings, to determine the validity of the petitioner's 'O' level computer certificate secured from the Calcutta University, disbursement of the petitioner's salary was stayed until further orders.

2. An advertisement, bearing No.12 of 2016, was issued by the Uttar Pradesh Subordinate Services Selection Commission, Lucknow (for short, 'the Commission'), advertising 2874 posts of Assistant Accountants, Auditors and Assistant Treasury Accountants to be filled up by direct recruitment. The selections were to be made by the Commission on the basis of a written test followed by interview. One of the essential qualifications was the possession of an 'O' level diploma certificate from a Government of India recognized institute.

3. It is the petitioner's case that, being eligible and qualified to be selected and appointed against one of these posts, the petitioner applied in response to the advertisement of 2016 issued by the Commission. He was issued an admit-card, permitting him to participate in the written examination. The petitioner appeared in the written examination, which he successfully passed. The petitioner says that he was directed by the Commission to produce his certificates of educational qualifications at the time of interview for document verification. The petitioner was successful in the interview and declared selected for appointment to the post of Assistant Accountant and Auditor on 16.10.2019. The result was declared by the Commission on the last mentioned date. The result dated 16.10.2019 mentioned that a few candidates have been conditionally selected as their 'O' level computer certificate was yet to be verified. The Commission, vide their letter dated 31.10.2019, directed the employers, that is to say, the Director, Internal Account and Audit, Directorate, U.P. to verify the educational qualifications and certificates of candidates before issue of appointment letters. In response to the aforesaid advice from the Secretary of the Commission, the selected candidates were directed to produce certificates of their educational qualifications in the prescribed proforma, which was done by the petitioner filling up the proforma on 17.12.2019. After verification of the petitioner's qualifications by the office of the Director, Internal Account and Audit, Directorate, U.P., the petitioner was issued a letter of appointment, signed by the Director, dated 16.06.2020. The petitioner was posted as an Assistant Accountant in the office of the Block Development Officer, Suriyawan, Bhadohi. The petitioner's name finds place at serial No.14 of the appointment-cum-posting letter dated 16.06.2020 issued by the Director. The petitioner joined service of the respondents as an Assistant Accountant on 24.06.2020.

4. According to the petitioner's case, he has been working continuously ever since in the office of the Block Development Officer, Suriyawan, Bhadohi to the satisfaction of his superiors and with no complaint against him. The petitioner was all of a sudden served with a show cause notice dated 07.06.2023 issued by the respondents, calling upon him to submit documents, that would verify his 'O' level computer diploma certificate. In reply to the said show cause notice dated 07.06.2023, the petitioner submitted documents, that would establish his case. The petitioner submitted his reply on 26.06.2023 as aforesaid. Once again a show cause notice dated 12.10.2023 was issued to the petitioner by the Director, calling upon the petitioner to submit his explanation with regard to the validity of his 'O' level computer certificate. Along side the said show cause, by an order of the selfsame date, the petitioner's salary was stopped pending inquiry into the validity of the petitioner's certificate last mentioned. This was followed by the order dated 22.12.2023, cancelling the petitioner's appointment on ground that his 'O' level computer certificate was forged and not issued by the Calcutta University.

5. Aggrieved by the orders dated 22.12.2023 and 12.10.2023, both passed by the Director, Internal Account and Audit, Directorate, U.P., this petition has been instituted under Article 226 of the Constitution.

6. A notice of motion by a reasoned order dated 12.08.2024 was issued and an ad interim stay of operation of both the impugned orders granted with a direction to permit the petitioner to discharge his duties regularly and pay him salary. In answer to the notice of motion, respondent Nos.2 and 3 filed a counter affidavit dated 31.08.2024, to which the petitioner filed a rejoinder dated

02.10.2024. Apart from the notice of motion, upon a complaint by the petitioner that the interim order is being observed in breach, this Court on 25.09.2024 ordered the Director to permit the petitioner to join and comply with the interim orders of this Court dated 12.08.2024 in letter and spirit. The Director was also asked to show cause why other measures be not adopted to enforce this Court's order, if the breach continued. The Director filed her reply to the show cause along with an application, bringing on record certain documents, which too add to the pleadings in this case. In order to enable the petitioner to plead to the facts brought on record through the Director's affidavit filed in reply to the show cause, the petitioner was given opportunity to file a counter affidavit, which he did on 02.10.2024. This too forms part of the pleadings.

7. On 03.10.2024, when this petition came up, the parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith. Judgment was reserved.

8. Heard Mr. Prashant Shukla, learned Counsel for the petitioner, Mr. Manish Goyal, learned Additional Advocate General assisted by Ms. Akansha Sharma, learned Standing Counsel appearing on behalf of respondent Nos.1, 2, 3, 5, 6 and 7, and Mr. Siddharth Singhal, learned Counsel appearing on behalf of respondent No.4. Service upon respondent No.8 is confirmed as per office report dated 30.08.2024, but no one has put in appearance.

9. It is argued by Mr. Prashant Shukla, learned Counsel for the petitioner that the respondents had already verified the 'O' level computer certificate relied upon by the petitioner, as evident from the result, that was declared by the Commission on 16.10.2019. It is pointed out that the Commission has specifically advised the respondent Department, vide letter dated 31.10.2019, to verify the educational qualifications and certificates before proceeding to issue appointment letters. Pursuant to the aforesaid advice, candidates were directed to produce their testimonials relating to their educational qualifications, submitting them in the prescribed proforma. The petitioner filled up the prescribed proforma, producing the requisite certificates on 17.12.2019. It was after verification of all documents relating to his educational qualifications that the petitioner was issued with the letter of appointment-cum-posting dated 16.06.2020 by the Director. The submission, therefore, is that the respondents are now estopped from cancelling the petitioner's appointment by relying upon the report allegedly received from the Calcutta University, saying that the petitioner's certificate has not been issued by them. After all, the respondents had verified the genuineness of the petitioner's certificate relating to the 'O' level computer course.

10. It is next urged that the petitioner's appointment has been cancelled after a period as long as three years, which is arbitrary and impermissible in law. The advertisement was issued in the year 2016 and the petitioner appointed on 16.06.2020, after clearing the written examination and interview. Ever since, he has been diligently working to the satisfaction of his superiors. Lapse, as it is, of a period of almost three years, the petitioner's appointment cannot be cancelled by the impugned order. It is next urged that after expiry of the period of probation and the petitioner becoming a regular employee of the Department, his appointment could not have been cancelled without holding a regular departmental inquiry. An inquiry in this case has to be held in accordance with the procedure prescribed under the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999'), which apply to the petitioner by virtue of Rule 26

of the Uttar Pradesh Government Subordinate Accounts Cadre (Non-Gazetted) Service Rules, 2014 (for short, 'the Rules of 2014').

11. The learned Counsel for the petitioner points out that the petitioner earned his 'O' level computer certificate, pursuing his studies with the Indian Technical Institute, Adarsh Bazar, Ghazipur (for short, 'the Technical Institute'), from 10.07.2012 to 05.08.2013. It is next submitted by the learned Counsel for the petitioner that after issue of the show cause notice dated 07.07.2023, the petitioner *ex abundanti cautela* passed his 'O' level computer certificate course again from the National Institute of Electronics & Information Technology (NIELIT), that was granted to him on 30.05.2024. It is then submitted that if any fraud had been committed by the Technical Institute, the petitioner, who was a bona fide student at the said institute, cannot be made to suffer on account of the fraud played upon him by the Technical Institute. The petitioner did not have knowledge about the 'O' level computer certificate, issued by the Technical Institute, being forged and fabricated. So far as he is concerned, he did not conceal any material facts, either before the Commission or the respondents, who have appointed him in their establishment. It is emphasized by Mr. Shukla that in the garb of passing the impugned orders, styled as orders of cancellation of appointment, the petitioner's services have been terminated, who is otherwise a regular and confirmed employee, appointed in accordance with Rules. He was selected after following the prescribed procedure by the Commission and then appointed by the Director vide order dated 16.06.2020. He was appointed to a cadre post. The impugned order dated 22.12.2023 is not an order of discharge of a probationer from service. If at all the petitioner's services had to be terminated, it could be done only after holding a departmental inquiry, as part of regular disciplinary proceedings, envisaged under the Rules of 1999 read with the Rule of 2014.

12. In support of his submissions, Mr. Shukla has relied upon the authority of the Supreme Court in *Avtar Singh v. Union of India and others*, (2016) 8 SCC 471, a decision of Padia, J. in *Abhiram v. State of U.P. and others*, 2020 SCC OnLine All 2248, and a Bench decision of this Court in *Smt. Parmi Maurya v. State of U.P. and others*, 2014 (2) ADJ 633 (DB).

13. Mr. Manish Goyal, learned Additional Advocate General assisted by Ms. Akansha Sharma, learned Standing Counsel, has primarily answered the petitioner on behalf of respondent Nos.1, 2, 3, 5, 6 and 7. It is argued by Mr. Goyal that the 'O' level computer certificate, that the petitioner claims to have earned from the University of Kolkatta, is forged to its face and has drawn the attention of the Court to a xerox copy of the certificate, annexed to the affidavit filed by the Director, Internal Account and Audit, Directorate, U.P. in reply to the show cause notice issued by this Court on 25.09.2024. He points out that a perusal of the certificate shows that it has been issued by the 'University of Kolkatta'. He says that there is no such university as the 'University of Kolkatta'. The 'University of Calcutta' does not write or describe itself as 'University of Kolkatta', but as the 'University of Calcutta'. He has further drawn attention of the Court to the same affidavit filed in support of the reply to the show cause last mentioned, where annexed as Annexure No.2 is a memo, bearing reference No. CE/Dip/Veri/11348/2023 dated 26.09.2023, addressed to the Director, Internal Account and Audit, Directorate, U.P., Lucknow by the Deputy Controller of Examinations, University of Calcutta. The memorandum aforesaid says in answer to a query by the Director, Internal Account and Audit, Directorate, U.P. that the document submitted has not been issued by

the Calcutta University. There is, thus, according to Mr. Goyal, a clear denial by the University of Calcutta having ever issued the 'O' level computer certificate, upon which the petitioner relies to support his candidature. He submits that possession of an 'O' level computer certificate is an essential qualification for appointment as an Assistant Accountant. The petitioner was given due opportunity, including a show cause notice and personal hearing, before the order for cancellation of appointment was passed by the Director. The petitioner neither disputed the certificate, upon which he relied to support his candidature, nor the verification report received from the University of Calcutta. He has invited the attention of the Court to what the petitioner said in his reply to the respondents' letter dated 07.06.2023, asking him to verify his 'O' level computer certificate. It figures at page No.76 of the writ petition paper book and reads:

" ' ' 2013 document
i "

14. The learned Additional Advocate General submits that adherence to principles of natural justice in this case would not require the holding of regular disciplinary proceedings as the very appointment of the petitioner is based on a forged document, which the petitioner does not deny, is the one he relies upon to support his candidature. Therefore, by not holding a regular departmental inquiry or disciplinary proceedings, in accordance with Rule 7 of the Rules of 1999, no prejudice would be caused to the petitioner. So far as the 'O' level computer certificate dated 31.05.2024, earned by the petitioner from the NIELIT is concerned, the same would be of no help as it has been earned after the petitioner's appointment. Mr. Goyal emphasizes that in fact the petitioner's endeavour to secure an 'O' level certificate in computers, all over again, constitutes an admission on his part that the certificate, upon which he relied to support his candidature, was forged.

15. Mr. Manish Goyal has relied upon the authority of the Supreme Court in *A.P. Public Service Commission v. Koneti Venkateswarulu and others*, (2005) 7 SCC 177; *Devendra Kumar v. State of Uttaranchal and others*, (2013) 9 SCC 363; *Manjul Kumar v. State of U.P.*, 2021 SCC OnLine All 2161; *Reena Devi v. State of U.P.*, 2019 SCC OnLine All 4783; and, *Union of India and others v. Bipad Bhanjan Gayen*, (2008) 11 SCC 314.

16. We have carefully considered the rival submissions advanced by learned Counsel for both parties and perused the record.

17. The moot question is, if as a thumb rule in all cases where an employee, who is appointed to a service in accordance with Rules after selection and confirmed in service, is it imperative to hold a full-fledged disciplinary proceedings before his service can be terminated, if the case is that he secured the appointment by practice of fraud, relying on forged documents of eligibility? The corollary of the question is, if an appointment is secured through practice of utter fraud, based on forged testimonials, can the appointment be cancelled without obliging the employer to hold a regular disciplinary proceedings against the employee, even if he is confirmed in service, by giving him a show cause notice and hearing him on the validity of the document.

18. To hold in his favour, during the course of submissions, learned Counsel for the petitioner has very forcefully relied upon Avtar Singh (supra), which is a three Judge Bench decision of the Supreme Court. The principles in Avtar Singh and the remarks that are relevant, to which our attention was invited, appear in paragraph Nos.33 to 38.11 of the report. These read:

"33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran case [Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94] , it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however, we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be

taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and

circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

19. No doubt, upon a reading of what has been remarked in paragraph No.33 and sub-para (9) of paragraph No.38 of Avtar Singh, it would seem that holding a departmental inquiry is imperative before an order of termination, removal or dismissal is passed against a public servant on the ground of suppression or submitting false information in the verification form, if the employee has been confirmed in service. But, the holding in Avtar Singh has to be understood in the context of facts and the issue, in regard to which principles there were laid down. It is a principle too well settled to brook doubt that a judgment is a precedent for what it actually decides. A fortiori, the principles laid down in a judgment have to be understood in the context of facts and the controversy involved, giving rise to the lis.

20. The three Judge Bench of their Lordships in Avtar Singh had before them a conflicting opinion of two Judge Division Benches, that were referred for authoritative pronouncement by the Division Bench in Jainendra Singh v. State of U.P., (2012) 8 SCC 748. The Division Bench in Jainendra Singh (supra) had noted divided opinion amongst various Division Benches, comprising two Judges of the Supreme Court on the question, if 'suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case', would have on the rights of an employee appointed to government service. It was

in the context of the said question and conflicting opinion that the three Judge Bench of their Lordships in Avtar Singh laid down the principles noted above. It is, therefore, evident that the principles in Avtar Singh have been culled out in the context of suppression or the furnishing of false information at the time of recruitment by a government servant upon his right to continue in service, once facts are discovered. These have no application to a case, that is founded purely on a charge of securing employment fraudulently by a candidate on the basis of forged educational qualifications, governing eligibility, or so to speak, essential qualifications. In our opinion, therefore, reliance placed by the petitioner on the principles in Avtar Singh would not be of much help to him.

21. The learned Counsel for the petitioner has reposed faith in the Bench decision of this Court in *Parmi Maurya* (supra). He has drawn the Court's attention to paragraphs Nos.7, 9 and 10 of the report in *Parmi Maurya*. These read:

"7. On these facts, the learned Single Judge, in our view, was clearly in error in arrogating to the Court the task of determining whether the certificate and mark sheets submitted by the appellant were genuine or otherwise. This, with respect, was no part of the jurisdiction of the writ Court under Article 226 of the Constitution. When a substantive charge of misconduct is levied against an employee of the State, the misconduct has to be proved in the course of a disciplinary inquiry. This is not one of those cases where a departmental inquiry was dispensed with or that the ground for dispensing with such an inquiry was made out. The U.P. Government Servants (Discipline and Appeal) Rules, 1999 lays down a detailed procedure in Rule 7 for imposing a major penalty. Admittedly, no procedure of that kind was followed since no disciplinary inquiry was convened or held.

9. The facts of the present case are, therefore, clearly distinguishable. The charge of misconduct has to be duly established. Since no disciplinary inquiry was held, the charge was never proved.

10. In this view of the matter, we are of the view that the judgement and order of the learned Single Judge is unsustainable and the special appeal would have to be allowed. We, accordingly, allow the special appeal in terms of the following directions:

(i) The judgement of the learned Single Judge dated 24 September 2013 is quashed and set aside;

(ii) In consequence, the order of termination dated 30 November 2010 shall stand quashed and;

(iii) The respondents shall be at liberty to hold a departmental inquiry in respect of the allegation of misconduct and take necessary action thereafter as may be warranted in accordance with law."

22. It is no doubt true that upon reading the facts in *Parmi Maurya*, it does seem that the principle there comes close to the point that arises here, but *Parmi Maurya* was a case after which the principle has received attention of the Supreme Court, that may not at all endorse *Parmi Maurya*. The issue was examined by this Court in *Narendra Kumar Tripathi v. State of U.P. and others*, 2021 (1) ADJ 654, and after an elaborate reference to *Punjab Urban Planning & Development Authority v. Karamjit Singh*, (2019) 16 SCC 782, this Court held:

"13. It is thus manifest that it has been the consistent view of our Courts that where the appointment is alleged to have been secured by fraud or misrepresentation, the normal rules governing the conduct of disciplinary proceedings were not liable to be followed. This since the termination in such a situation is not on account of a misconduct committed during the course of employment. All that is required in such a situation is to place the employee on notice and comply with the fundamental principles of natural justice.

14. *Parmi Maurya* was a case where the charge of fabrication was seriously disputed and challenged by the employee who had also not been provided access to the material on the basis of which that charge was sought to be established. It becomes pertinent to recollect that contrary to the above, the petitioner here does not dispute the charge of fabrication. The decision is thus clearly distinguishable and does not come to the aid of the petitioner. The decision in *Abhiram* merely follows the aforesaid decision without noticing the other decisions of this Court as well as the Supreme Court which have consistently held to the contrary and in unequivocal terms laid down the law to be that a regular departmental enquiry is not liable to be drawn where the initial appointment has been obtained by practise of fraud and is thus void and non-est. This of course subject to the caveat and as held herein above, that the rudimentary principles of natural justice must necessarily be adhere to and followed."

23. We must remark that *Parmi Maurya* was a case, where the charge of fabrication was seriously disputed and challenged by the employee, whereas in *Narendra Kumar Tripathi* (supra), the charge of fabrication was described by the Court as not disputed. It was one of the parameters on which *Parmi Maurya* was held not to apply in the case of *Narendra Kumar Tripathi*. Of course, it was held also not applicable when followed in *Abhiram* (supra) for reason that *Abhiram* had followed *Parmi Maurya* without noticing other decisions of this Court and the Supreme Court, where a contrary view was taken. It must also be remarked here that though the petitioner in this case, unlike *Narendra Kumar Tripathi*, disputes the charge of his 'O' level computer certificate being forged, but the denial is one that is there for a formality.

24. We say so because the petitioner does not dispute the document, which he says is a certificate of an 'O' level in computers, earned from the University of Kolkatta, as he says, and also does not dispute the genuineness of the verification report dated 26.09.2023, secured by the respondents from the University of Calcutta, disowning the petitioner's 'O' level certificate in computers. The petitioner, if he wanted, could have disputed the verification report by producing a report to the

contrary from the University of Calcutta, affirming the certificate of 'O' level in computers, on which he relies to support his candidature. If this were the case, the matter might have then been one involving sufficient dispute on facts about the charge as would oblige the respondents in case of a confirmed employee, like the petitioner, to hold disciplinary proceedings. This is a case where the fraud and forgery are hardly denied and both are apparent to the face.

25. We have perused the photostat copy of the 'O' level computer certificate, on which the petitioner relies and annexed as Annexure No.1 to the affidavit filed by the Director, Internal Account and Audit, Directorate, U.P., Lucknow, in reply to the show cause. The certificate is mentioned in paragraph No.8 of the affidavit aforesaid by the Director. The petitioner has filed a counter affidavit to this affidavit filed by the Director. In paragraph No.7 of the counter affidavit filed by the petitioner, the contents of paragraph Nos.7 to 11 of the Director's affidavit (in reply to the show cause) have been answered. It is said that all these paragraphs are wrong, incorrect and denied, but the averments there do not at all say that the document annexed as Annexure No.1 to the Director's affidavit is not the 'O' level computer certificate, upon which the petitioner relies to found his candidature. All that is said is that the petitioner did his 'O' level computer course from the Technical Institute after studying at the said institute from 10.07.2012 to 05.08.2013. He has annexed, along with his counter affidavit, a true copy of the identity card issued by the Technical Institute and a copy of the certificate also granted by the same Institute. Thus, for a fact, the document annexed as Annexure No.1, being the certificate relating to 'O' level in computers dated 22.08.2013, upon which the petitioner relied before the respondents to support his candidature, is not denied.

26. We have also looked into the certificate issued by the Technical Institute, where the petitioner says, he read for a year to earn the aforesaid certificate from the University of Kolkatta. It is a photostat copy of the certificate dated 15.03.2022. The letterhead of the Technical Institute on its face does not show it to be affiliated to the University of Calcutta and the contents thereof saying that the petitioner studied at the Institute are written by hand. Not to say that a hand written certificate cannot be issued by an authorized and authentic educational institute, but ex facie a look at the certificate does not inspire confidence at all that the Technical Institute has anything to do with the University of Calcutta. The certificate of 'O' level in computers, upon which the petitioner has relied, reads at the top of it "UNIVERSITY of Kolkatta WITH INDIAN TECHNICAL INSTITUTE (An Autonomous Scientific Society of Department of Information Technology Ministry of Communication and Information Technology, Government of India for Accreditation of Computer Courses under the (AICTE-DIT Scheme). On the left side at the top of this certificate is the University's monogram, describing it as 'University of Calcutta' and the monogram by the rest of its content and design is the same as that used by the University of Calcutta. But, at the top, the University is described as the 'University of Kolkatta'. The University of Calcutta in none of its papers or websites describes itself as the University of Kolkatta. These are stark facts, which show ex facie the certificate to be the product of forgery. In addition, the way the certificate describes it to have been issued by the University of Kolkatta with the Technical Institute, which does not mention where this Technical Institute is located, makes the inference of forgery inescapable.

27. Then there are other irresponsible things written on the head of the certificate, reproduced hereinabove. It describes the Technical Institute as an Autonomous Scientific Society of Department of Information Technology, Ministry of Communication and Information Technology, Government of India for Accreditation of Computer Courses under the (AICTE-DIT Scheme). There is nothing to show that this Institute is anyway an Autonomous Scientific Society of the Department of Information Technology etc. of the Government of India. Nothing has been shown to the Court that the Government of India would have anything to do with an Autonomous Scientific Society, like the one, called the Technical Institute. The letterhead, on which the certificate dated 15.03.2022 has been issued to the petitioner, does not show anything about the nature of the organization that the Technical Institute is. It is not said there that it is affiliated to the University of Calcutta or that it is an Autonomous Scientific Society under the Department of Information Technology.

28. Coming back to the 'O' level certificate in computers, relied upon by the petitioner dated 22.08.2013, issued by the University of Kolkatta, it is shown to be signed by the 'Controller of Examination, Kolkatta'. It does not even say that it is signed by the Controller of Examination, University of Calcutta. It is signed together by the Executive Director of the Technical Institute. These are telltale matters, which ex facie show the 'O' level certificate in computers, relied upon by the petitioner, a product of forgery. We say that the document is forged, because it is purported to have been issued by the University of Calcutta, signed by the Controller of Examination of the said University, when in fact it is not. This is what precisely makes the document forged. The clincher comes when we look at memo No. CE/Dip/Veri/11348/2023 dated 26.09.2023 issued by the Deputy Controller of Examinations, University of Calcutta. This is a memo that was issued by the University of Calcutta in answer to a query by the Director, Internal Account and Audit, Directorate, U.P., if the petitioner's 'O' level certificate in computers was granted by the University. The unequivocal answer, albeit in a prescribed proforma is that the document submitted was not issued by the University of Calcutta. There is, therefore, hardly any kind of doubt that the petitioner's candidature is based on an utterly forged document, relating to an essential qualification for appointment. The petitioner's appointment is, therefore, beset by fraud.

29. Now, the question, if an employee, who has been confirmed in service, but found to have secured his appointment by practice of fraud, relying on forged eligibility certificates, can suffer a cancellation of appointment without disciplinary proceedings, we think, is sufficiently answered against the petitioner by this Court in Narendra Kumar Tripathi and the Supreme Court in Karamjit Singh (supra). An appointment secured by utter fraud, even if the employee has proceeded to confirmation in service, would not entitle him to the holding of disciplinary proceedings, where the fraud is apparent and requires no consideration of evidence on both sides to reach a definitive conclusion. Of course, the employee would be entitled to opportunity to show cause, which in this case has been given in ample measure. The petitioner was given a show cause notice dated 07.06.2023, to which he submitted his reply on 26.06.2023. A second show cause notice dated 12.10.2023 was issued to the petitioner by the Director, calling upon him to submit his explanation with regard to the validity of his 'O' level certificate in computers. Therefore, it is not a case where the petitioner was not given any opportunity to have his say about the case of fraud, vitiating his appointment, based on the forged eligibility testimonial. In a case of this kind, where the fraud is apparent, the law would not require regular disciplinary proceedings to be held. After all, in a case

like the present one, the fraud goes to the root of the matter, vitiating the petitioner's very appointment and his right to hold the post at the inception of service. It is not a case of misconduct done along the course of his employment. It is nothing to do with service misconduct per se. It is about the validity of his candidature at the threshold.

30. We are of opinion that in a case like this, even a confirmed employee would not be entitled to disciplinary proceedings being held against him under the Rules of 1999 that apply here. But, he would be entitled to show cause and a reasonable opportunity, which has been afforded to the petitioner in this case. Reference in this connection may be made to *Manjul Kumar (supra)*, which was a case of an Assistant Teacher, securing employment with the Pt. Dindayal Purva Madhyamik Vidyalaya, Bitia, Belhar, District Sant Kabir Nagar on the basis of a forged Intermediate Mark-sheet, a forged B.Sc. Degree and a forged Teachers Eligibility Test certificate. In the context of these facts, Suneet Kumar, J. remarked:

"11. It follows that when a candidate is found to have put forth a false claim on the strength of forged and manufactured documents and obtained appointment, it would be a negation of the rule of law to exercise jurisdiction under Article 226 to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support those who make untrue claims based on forged educational documents.

12. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilized to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. (Refer: *Nidhi Kaim v. State of M.P.*).¹ It is not disputed by the petitioner that the documents were duly verified by the competent authorities and the authorities conferring the certificates have certified that the documents relied upon by the petitioner are forged and manufactured documents. Petitioner in the circumstances would have no right to continue on the post and receive salary. The very foundation on which the appointment rests is non-est -- void abinitio. Nothing further has to be done by the authorities but to discontinue the appointment. In permitting the petitioner to continue in service and pay salary would perpetuate fraud and misrepresentation that would be negation of rule of law. Petitioner, his father (clerk) and the then Basic Education Officer were throughout aware that petitioner had obtained the appointment by fraud."

31. The same issue arose in the context of an appointment secured through an illegal and void adoption of the employee in *Raj Kumar Saxena v. Basic Shiksha Parishad U.P. and others*, 2019 SCC OnLine All 4256. In the said case, after a survey of much relevant authority on the point, it was held:

"35. On specific query, as to how, the names of biological parents came to be recorded in the high school and intermediate certificates despite the petitioner having been adopted at the age of 7 years. Learned counsel for the petitioner placed reliance on

the decision rendered by the Single Judge of this Court in Ravindra Kumar v. State of U.P., to contend that the Board of High School and Intermediate Examination records the names of the biological parents instead of the adoptive parent in the high school/and intermediate certificates, therefore, the names of the biological parents and not the adoptive mother came to be recorded in the certificates. The facts obtaining in Ravindra Kumar (supra) is distinguishable. The deed of adoption was a registered deed and a valid deed; the petitioner, therein, had approached the Board for correction of the certificate which was declined by the Board in absence of rules permitting such correction. This is not the case in the instant case. The deed of adoption is invalid and unenforceable in law.

36. The plea on the face of it is untenable for the reason that the petitioner as per his own case was adopted at the age of 7 years and in view of the Section 12 of the Act, 1956, the adopted child for all purposes shall be deemed to be the child of his adoptive parent. However, the name of the adoptive mother does not find recorded in either of the certificates (class 10 and 12). Nor does such a reference finds in the Parivar Register prepared under U.P. Panchayat Raj (Maintenance of Family Register) Rule, 1970. It therefore, follows that until taking the examination of class 12, the alleged adoption deed had not seen the light of day. It was an after thought to get an unregistered adoption deed executed for the purposes of obtaining compassionate appointment. The State Amendments came to be inserted in Act, 1956 and Act, 1908 to avoid such fraud and misrepresentation on the basis of such document.

37. It follows from the position in law that where an appointment has been obtained on fraud and misrepresentation on the strength of a manufactured document which is the basis of the appointment, such an appointment is void and nonest since inception. The consequence upon recording a finding that the document is nonest is discontinuance of such appointment. It is not a case of commission of misconduct during the course of appointment inviting imposition of major penalty under the Service Rules."

(emphasis by Court)

32. To like effect is the holding of this Court in Narendra Kumar Gond v. State of U.P. through Secretary (Basic Education) and others, 2018 SCC OnLine All 5716, where it was held:

"10. The contention of the petitioner that disciplinary proceedings should have been held in th matter and as this has not been done the impugned order is vitiated, is not tenable in law for the reason the factum of employment of petitioner's mother at the time of his father's death and the petitioner's compassionate appointment is undisputed and secondly, in view of the provisions contained in the appointment letter itself and even otherwise in the facts of the case it is the appointment which has been cancelled for the reasons disclosed hereinabove, rightly so, after giving due

opportunity of hearing to the petitioner which cannot be faulted and also as it is not a case of misconduct having been committed during the course of service but it is a case of cancellation of his appointment on the ground that the same was obtained by misrepresentation/concealment and incorrect facts. In the case of R. Vishwanatha Pillai (supra) also the Supreme court itself was in agreement that a full-fledged inquiry in view of provisions of Article 311 of the Constitution was not required in such matters by holding as under:--

"Para-15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

Para-16. In *Ishwar Dayal Sah v. State of Bihar*, 1987 Lab.I.C. 390, the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above

contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held:

"If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possible flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Art. 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Art. 311 is not attracted.""

33. In view of all that has been said, no case for interference with the impugned orders is made out.

34. In the result, this writ petition fails and is dismissed.

35. The interim order dated 12.08.2024 is hereby vacated.

Order Date :- 01.04.2025 Anoop (J.J. Munir) Judge