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RESHMA SULTANA

v.

THE STATE OF KARNATAKA & ORS.

(Civil Appeal No. 3484 of 2022)

MAY 10, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

- Service Law – Selection – Selection process – Fraud, collusion and manipulation – Post of full-time College Lecturer in Urdu subject – Single Judge of High Court in a writ petition set aside the appointment of appellant, finding it to be vitiated by fraud and manipulation and thereafter passed an order directing to forward necessary documents and proposals to the concerned authorities for purpose of appointing respondent no.10-original writ petitioner – Judgment of Single Judge confirmed by Division Bench of High Court in writ appeal – Whether after holding the appointment of appellant to be not valid, the High Court could have thereafter directed for appointment of respondent No.10-original writ petitioner – Held: Once the entire selection process was found to be vitiated due to fraud, collusion and manipulation, thereafter the Single judge of High Court ought to have passed the order for a fresh selection after following the due process of selection as required – Moreover, respondent no.10 is also seeking appointment pursuant to the very selection process/recruitment process which is found to be fraudulent and suffers from manipulation of record – Under the circumstances, direction issued by the Single Judge, which was not interfered with by the Division Bench directing to forward the documents of respondent No.10 to consider his case for appointment is unsustainable – Fresh selection process be initiated for filling up the post of Urdu Lecturer after following due process under supervision of respondent No.2-Commissioner of Collegiate Education.*

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Partly allowing the appeal, the Court

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HELD:1. The Single Judge of the High Court has, on appreciation of entire material on record, specifically found that the entire selection process was vitiated by fraud and there was a manipulation of the record and no resolution, on the basis of

which the appellant was appointed was in existence and there was an interpolation. Once the entire selection process was found to be vitiated due to fraud, collusion and manipulation, thereafter the Single judge ought to have passed the order for a fresh selection after following the due process of selection as required. It is to be noted that the original writ petitioner is also seeking appointment pursuant to the very selection process/recruitment process which is found to be fraudulent and suffers from manipulation of record. Under the circumstances, the direction issued by the Single Judge, which was not interfered with by the Division Bench directing to forward the documents of the respondent No.10– original writ petitioner to consider his case for appointment is unsustainable. [Paras 6, 6.1][188-E-F, H; 189-A-B]

2. Now, so far as the quashing and setting aside the appointment of the appellant by the Single Judge confirmed by the Division Bench is concerned, apart from the fact that this Court had issued a limited notice, even on merits also and considering the fact that the entire selection process/recruitment process was found to be fraudulent and it was found that there was a manipulation in the resolution and as such no resolution was passed to appoint the appellant, it cannot be said that the Single Judge committed any error in quashing and setting aside the appointment of the appellant. The same has been rightly confirmed by the Division Bench of the High Court. [Para 7] [189-B-D]

3. However, that part of the direction/order passed by the Single Judge by which the Single Judge directed to forward necessary documents and proposals to the concerned authorities for the purpose of appointing the original writ petitioner as a full-time Lecturer in Urdu subject, which is not interfered with by the Division Bench of the High Court is hereby quashed and set aside. A fresh selection process be initiated for filling up the post of Urdu Lecturer after following due process as required and the same shall be monitored and supervised by respondent No.2 - Commissioner of Collegiate Education and this exercise be completed preferably within a period of three months. [Para 8][189-E-G]

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- A CIVIL APPELLATE JURISDICTION : Civil Appeal No.3484
of 2022.

From the Judgment and Order dated 24.09.2020 of the High Court of Karnataka at Dharwad Bench in W.P. No.100066 of 2020 (S-RES).

- B Ms. Amrita Sharma, Darpan K. M., Hetu Arora Sethi, Advs. for the Appellant.

Rajesh Mahale, V. N. Raghupathy, Mohd. Iqbal Khairati, Gaurav Agrawal, Advs. for the Respondents.

The Judgment of the Court was delivered by

- C **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.09.2020 passed by the Division Bench of the High Court of Karnataka, Bench at Dharwad, in W.A. No. 100066 of 2020 by which the Division Bench of the High Court has dismissed the said

- D appeal preferred by the appellant herein – original respondent No.10, the appellant herein – original respondent No.10 - Reshma Sultana has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

- E 2.1 That respondent No. 10 herein – Ilyas Ahmed Patwagar – original writ petitioner applied for the post of Urdu Teacher in Nehru Arts, Science and Commerce Degree College, Hubli, run by Anjuman-E-Islam Education Board. He was appointed on 1.7.2002. Later, an advertisement was published in the local newspaper on 26.8.2007 calling for the filling up of posts of Urdu Lecturers in the same College. The F original writ petitioner also submitted his application.

G Interviews for different posts were conducted on 23.10.2007. The Management informed the Commissioner of Collegiate Education that in respect of Urdu subject, it was resolved to appoint a highly knowledgeable subject expert and to seek his opinion before making any

- H appointment and accordingly Urdu Teacher's appointment was postponed. On 13.3.2009 the Management informed the original writ petitioner that the appellant herein - Reshma Sultana has been appointed as Urdu Lecturer. The management sought approval for her appointment from the second respondent - Commissioner of Collegiate Education. The second respondent - Commissioner of Collegiate Education sought

management's explanation as to how the appellant herein could have been appointed without seeking opinion of a subject expert. However, in January 2010, the Commissioner of Collegiate Education approved the appointment of the appellant herein.

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2.2 Feeling aggrieved, the original writ petitioner filed the writ petition before the learned Single Judge. By a detailed judgment and order, the learned Single Judge quashed the appointment of the original respondent No. 10 – appellant herein and also issued further directions to the management to forward necessary documents and proposals to the concerned authorities for the purpose of appointing the original writ petitioner as a full-time Lecturer in Urdu subject.

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2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge quashing the appointment of the appellant as an Urdu Lecturer and issuing the direction to forward necessary documents and proposals to the concerned authorities for the purpose of appointing the original writ petitioner as a full-time Lecturer in Urdu subject, the appellant herein preferred the writ appeal before the Division Bench. By the impugned judgment and order, the Division Bench has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge.

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2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench dismissing the writ appeal and confirming the judgment and order passed by the learned Single Judge, quashing the appointment of the appellant herein as an Urdu Lecturer, the original respondent No. 10 before the learned Single Judge and the appellant before the Division Bench of the High Court, whose appointment has been set aside by the learned Single Judge confirmed by the Division Bench of High Court has preferred the present appeal.

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3. While issuing notice on 08.01.2021, this Court passed the following order:-

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Issue notice limited to the question as to whether the High Court in a writ petition, after holding the appointment of the petitioner to be not valid, could have directed for appointment of respondent No.10 who was neither recommended by the Committee nor approved by the competent authority for the selection in pursuance of 2007 recruitment, returnable within six weeks.”

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- A 4. Therefore, the short question, which is posed for the consideration of this Court is whether after holding the appointment of the appellant to be not valid, the High Court could have thereafter directed for appointment of respondent No.10 herein – original writ petitioner, who was neither recommended by the Committee nor approved by the competent authority for the selection in pursuance of 2007 recruitment.
- B 5. Learned counsel appearing on behalf of the respondent No. 10 herein – original writ petitioner has vehemently submitted that he is better qualified than the appellant herein. It is submitted that the appellant has only passed SLET whereas respondent No.10 – original writ petitioner has passed both NET and SLET; the original writ petitioner has also scored 65% marks in regular M.A. It is further submitted that the original writ petitioner has twenty-five years of experience in teaching the post-graduate students, whereas the appellant has no experience in teaching the post-graduate students. Apart from that, the original writ petitioner has been awarded Ph.D. in Urdu in February, 2021 by the University of Mumbai. It is the case on behalf of the respondent No.10 herein – original writ petitioner that therefore while quashing and setting aside the appointment of the appellant herein – the learned Single Judge has rightly directed to forward necessary documents and proposals to the concerned authorities for the purpose of appointing the original writ petitioner as a full-time Lecturer in Urdu subject.
- E 6. Having heard the learned counsel appearing for the respective parties, we have considered the fact that the learned Single Judge has, on appreciation of entire material on record, specifically found that the entire selection process was vitiated by fraud and there was a manipulation of the record and no resolution, on the basis of which the appellant was appointed was in existence and there was an interpolation. Thereafter the learned Single Judge while quashing and setting aside the appointment of the appellant, which was vitiated by fraud and manipulation etc. could not have further passed an order directing to forward necessary documents and proposals to the concerned authorities for the purpose of appointing the original writ petitioner as a full-time Lecturer in Urdu subject.
- H 6.1 Once the entire selection process was found to be vitiated due to fraud, collusion and manipulation, thereafter the learned Single judge ought to have passed the order for a fresh selection after following the due process of selection as required. It is to be noted that the original

writ petitioner is also seeking appointment pursuant to the very selection process/recruitment process which is found to be fraudulent and suffers from manipulation of record. Under the circumstances, the direction issued by the learned Single Judge, which was not interfered with by the Division Bench directing to forward the documents of the respondent No.10 herein – original writ petitioner to consider his case for appointment is unsustainable.

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7. Now, so far as the quashing and setting aside the appointment of the appellant herein by the learned Single Judge confirmed by the Division Bench is concerned, apart from the fact that this Court had issued a limited notice as observed hereinabove, even on merits also and considering the fact that the entire selection process/recruitment process was found to be fraudulent and it was found that there was a manipulation in the resolution and as such no resolution was passed to appoint the appellant, it cannot be said that the learned Single Judge committed any error in quashing and setting aside the appointment of the appellant herein. The same has been rightly confirmed by the Division Bench of the High Court.

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8. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment and order passed by the Division Bench and that of the learned Single Judge quashing and setting aside the appointment of the appellant as Urdu Lecturer is hereby confirmed. However, that part of the direction/order passed by the learned Single Judge by which the learned Single directed to forward necessary documents and proposals to the concerned authorities for the purpose of appointing the original writ petitioner as a full-time Lecturer in Urdu subject, which is not interfered with by the Division Bench of the High Court is hereby quashed and set aside. A fresh selection process be initiated for filling up the post of Urdu Lecturer after following due process as required and the same shall be monitored and supervised by respondent No.2 herein - Commissioner of Collegiate Education and this exercise be completed preferably within a period of three months from today.

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With this, the present appeal is partly allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.