



A.F.R.

Neutral Citation No. - 2025:AHC:146583

Court No. - 52**Case :-** WRIT - A No. - 20140 of 2023**Petitioner :-** Kamlesh Kumar Nirankari**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Anil Kumar Verma, Kamallesh Kumar Nishad, M.S. Chauhan, Ravindra Kumar Srivastava, Shriprakash Shrivastava**Counsel for Respondent :-** Shashi Prakash Singh**Hon'ble Mrs. Manju Rani Chauhan, J.**

1. Heard Mr. Shriprakash Srivastava, learned counsel for the petitioner, Mr. Shashi Prakash Singh, learned counsel for the respondent nos.2&3 and Mr. Shailendra Singh, learned counsel for the State-respondent.

2. The instant writ petition has been preferred, inter alia, challenging the order dated 6.10.2022, passed by Respondent No.2, whereby the appointment of the petitioner on the post of Assistant Teacher has been rendered null and void, and a consequential direction for recovery of the salary paid has also been issued.

3. Learned counsel for the petitioner has made the following contentions:-

i) The petitioner was initially appointed as an Assistant Teacher vide order dated 10.08.2010, and the appointment letter was issued by Respondent No.2 on the same date. The petitioner discharged his duties honestly, and there were no complaints against him.

ii) Subsequently, the District Basic Education Officer issued a letter dated 26.06.2020, calling the petitioner to appear on 02.07.2020 to explain the documents produced at the time of appointment.

iii) Further, another letter dated 14.08.2020 was issued, requiring the petitioner to submit documents on 17.08.2020 and appear before the Block Education Officer. The petitioner was again required to be

present before the Block Education Officer vide letter dated 26.06.2020.

iv) On 13.06.2022, the petitioner appeared before the Block Education Officer and submitted the relevant documents, i.e., his appointment letter, mark sheets and certificates of High School, Intermediate, Bachelor of Arts (B.A.), and Bachelor of Education (B.Ed.) as well as BTC training certificate, and domicile certificate.

v) Notwithstanding the submission of documents, Respondent No. 2 passed an order dated 6.10.2022, declaring the Petitioner's appointment null and void *ab initio* and directing recovery of the salary paid to him.

vi) The learned counsel for the petitioner submits that the impugned order suffers from fundamental infirmities. Firstly, a copy of the impugned order has not been served upon the petitioner, which is violative of the principles of natural justice and contrary to the mandate of law. Secondly, the impugned order has been passed in a mechanical manner, sans application of mind, rendering it illegal, arbitrary, and *mala fide*.

vii) The petitioner appeared before Respondent No.2 on 13.06.2022 and submitted all the relevant educational certificates, which have not been considered while passing the impugned order.

viii) It is contended that if the original documents were suspected to be forged, a thorough inquiry should have been conducted by the concerned Board or University, which has not been done.

ix) It is further submitted that the entire exercise appears to have been done based on a complaint moved by one Kamlesh Kumar Yadav.

x) It is contended that the Petitioner is a resident of Village Haldi Rampur, Tehsil Belthra Road, District Ballia, and belongs to the Scheduled Caste category, specifically Hindu Chamar. The petitioner's

date of birth is 20.06.1982, as per his academic records. He studied up to Class 5th at Prathamik Vidyalaya Taranv, Ghazipur and subsequently, completed Class 6th to 12th at Hanuman Singh Inter College, Devkali, Gazipur (U.P.). The Transfer Certificate, issued on 15th December 2023 by the Principal of the institution, has been appended as Annexure No.SA-3 of the 2nd supplementary affidavit. Perusal of the document reveals no evidence of manipulation, forgery, or cheating by the Petitioner. However, due to inadvertent errors on the part of the concerned authorities, the petitioner's name appears as 'Kamlesh Kumar' in PAN Card, 'Kamlesh' in Aadhar Card and 'Kamlesh Kumar s/o Ramtahal Ram' in the certificate of Special B.T.C. Training 2008, whereas his all academic documents shows the name "Kamlesh Kumar Nirankari s/o Ram Tahal Ram" as well as residential certificate, and Scheduled Caste certificate bear the name of petitioner as 'Kamlesh Kumar' s/o Ram Tahal. The Petitioner submits that these discrepancies are not attributable to any fault on his part but are rather due to mistakes committed by the authorities.

xi) Learned counsel for the petitioner further contends that the cancellation was effected without affording him a full-fledged opportunity of hearing or conducting a regular departmental enquiry, thereby violating the principles of natural justice.

xii) He further submits that the impugned order violates the principles of natural justice and is, therefore, unsustainable in the eyes of law.

4. On the other hand, learned counsel for the respondent-BSA, submits that the Petitioner obtained appointment on the basis of forged marksheets and certificates. It is contended that the Petitioner was selected for the Special BTC Training 2008 on the basis of forged documents. The petitioner had not submitted his entire documents despite various letters issued by the departments. The petitioner has filed the instant writ petition mentioning his name as "Kamlesh

Kumar Nirankari” but alongwith his record has not annexed his residential certificate and the Aadhar Card produced by the petitioner, which shows the name as “Kamlesh” s/o Ram Tahal, resident of Haldi Rampur, Ballia U.P. Pin Code-221715. The address mentioned by the petitioner appears to be suspicious, therefore, vide office letter no.9697-99/2021-22 dated 02.12.2021 addressed to the Senior Superintendent of Police, District Ballia, it was requested to provide the verification report followed by another letter no.11460/2021-22 dated 19.01.2022, a request was again made for verification of the address. However, no reply was received, therefore, another letter bearing no.12236/2021-22 dated 17.02.2022 and letter no.428/2022-23 dated 13.04.2022 was issued requesting for verification of the address of the petitioner. Hence, Superintendent of Police, Ballia submitted a verification report dated 21.07.2022, wherein it was informed as under:-

“कमलेश कुमार पुत्र रामटहल निवास पता हल्दीरामपुर, थाना-उभांव, जनपद-बलिया का सत्यापन किया गया तो इस नाम पता का कोई व्यक्ति हल्दीरामपुर में नहीं रहता है।”

5. He, therefore, submits that after affording full opportunity to the petitioner the order impugned dated 06.10.2022 was passed, which is correct, legal and proper and does not call for any interference.

6. In reply, learned counsel for the petitioner submits that the petitioner had no knowledge of the letters dated 26.06.2020 and 14.08.2020, which were not served on the petitioner. However, when the letter dated 06.06.2022 was issued by respondent no.3 to the petitioner, the petitioner received it by registered post at the same address, which is annexed in the supplementary affidavit as Annexure No.1. The respondent authority ignored the same and passed the impugned order. The petitioner's address mentioned in the service document is correct, and the letter dated 06.06.2022 was received by the petitioner at the same address. Thereafter, the petitioner replied to the same on 13.06.2022 before the office of respondent no.3

physically and filed an application on the same date before the office dispatch section, which was received and endorsed on the application.

7. Learned counsel for the respondent-BSA further submits that no notice or inquiry is required when fraud has been played. He further submits that it is the complainant whose documents have been used by the petitioner showing himself to be Kamlesh Kumar Nirankari in place of Kamlesh Kumar s/o Ram Tahal. In support of his contention, he has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **District Basic Education Officer and another vs. Smt. Punita Singh and 3 others**¹.

8. Heard learned counsel for the parties and perused the record.

9. The following issues arise for determination in the present case:-

- a). Whether the Petitioner's appointment was obtained through fraudulent means?
- b). Whether the Respondent was justified in cancelling the Petitioner's appointment without conducting an inquiry?
- c). Whether the Petitioner is entitled to any relief in the circumstances?

10. The law is well-settled on this issue, with numerous judicial pronouncements emphasizing the importance of integrity and honesty in public appointments. Courts have consistently held that fraudulent appointments are void ab initio and must be set aside, regardless of the consequences.

11. Individuals who obtain appointments through fraudulent documents or actions are not entitled to any legal protection or benefits derived from such appointments. The law clearly states that any benefits obtained through fraudulent means must be returned. The

Apex Court in the case of **Union of India vs. M. Bhaskaran**² has held that if employment is obtained by committing fraud, such appointment cannot be countervance and reinstatement is impermissible.

12. In the case of **Ram Chandra Singh vs. Savitri Devi**³, the Apex Court held that fraud as is well known vitiates every solemn act, fraud and justice never dwells together.

13. If an appointment is found to be based on forgery, the authority has the right to recall the appointment. The individual appointed under such circumstances cannot claim any equity or rights based on their continued service, as the appointment is fundamentally flawed. The aforesaid has been held by the Co-ordinate Bench of this Court in the case of **Usha Singh vs. State of U.P. and another**⁴. Also the same has been held by Madhya Pradesh High in the case of **Nageswar Sonkesri vs. State of M.P. and another**⁵.

14. In the case of **Vijay Krishnarao Kurundkar and another vs. State of Maharashtra and Others**⁶, the Apex Court has consistently held that appointments made on the basis of forged documents are invalid and such appointments are void ab initio and cannot be legitimized by any subsequent actions.

15. In the case of **Jainendra Singh vs. State of U.P.**⁷, Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under :-

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years,

2 (1995) Supp(4) SCC 100

3 (2003) 8 SCC 319

4 2017 SCC Online All 6109

5 2020 SCC Online MP 4461

6 2020 SCC Online SC 834

7 2012 (8) SCC 748

on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was

acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

(Emphasis supplied by me)

16. Thus, the law in case of appointment obtained fraudulently is well settled. Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together."

17. In view of the foregoing analysis and observations, now, it is clear that when any selection/recruitment or appointment to some post was made illegally and it is noticed on the complaint or at subsequent stage that illegalities, irregularities, improprieties, procedural infirmities and deficiencies and defects have occurred, forgery or foul-play adopted or non observance of Act, rules, norms were made in process then the beneficiary candidate, who has become output and product of such defective and bad selection or outcome of spoiled

system process, shall have no right or claim to the post or salary or any consequential benefits in the service.

18. In so far as the submission made by counsel for the petitioner that the copy of impugned order has not been served upon the Petitioner, which is violative of the principles of natural justice and contrary to the mandate of law, it cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that principles cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in **K.L. Tripathi Vs. State Bank of India & Ors.**⁸; **N.K. Prasada Vs. Government of India & Ors.**⁹; **State of Punjab Vs. Jagir Singh**¹⁰; **Karnataka SRTC Vs. S.G. Kotturappa**¹¹ and in **Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd**¹².

19. In **Union of India Vs. Tulsiram Patel**¹³, the Supreme Court observed :-

"Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible."

20. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference can be made to the decisions of the Supreme Court in the cases of **Sohan Lal Gupta VS. Asha Devi Gupta**¹⁴; **Mardia Chemicals Ltd. Vs. Union**

8 (1984) 1 SCC 43

9 (2004) 6 SCC 299

10 (2004) 8 SCC 129

11 (2005) 3 SCC 409

12 (2005) 5 SCC 337

13 (1985) 3 SCC 398

14 (2003) 7 SCC 492

of India¹⁵ and Canara Bank Vs. Debasis Das¹⁶.

21. An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine.

22. It is well settled that if the initial appointment itself was obtained fraudulently then no enquiry in terms of Rules 1999 is required as is held by the Hon'ble Supreme Court in the cases of **R. Vishwanatha Pillai Vs. State of Kerala and others¹⁷**, and **Patna High Court judgements in Ishwar Dayual Sah Vs. State of Bihar¹⁸ and Rita Mishra Vs. Director, Primary Education¹⁹**. The Apex Court, in the aforesaid cases, 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

15 (2004) 4 SCC 311

16 (2003) 4 SCC 557

17 (2004) 2 SCC 105

18 1987 Lab IC 390

19 1988 Lab IC 907

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.”

23. In the case of **Union of India Vs. Prohlad Guha etc.**²⁰, it has been clearly held by the Apex Court that in case the employment has been obtained based on fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek that proper procedure as prescribed under Rule 1999 must be followed.

24. In the present case, the petitioner has used the documents of the complainant, who had not come to join at the place where the petitioner joined as he was given appointment somewhere else and after coming to know that the petitioner was taking benefits of his educational certificates, as he had produced the same before the authorities to get an appointment on which the petitioner was called to bring the original certificates, which he could not, hence complaint made was look into.

25. From the records, it is also clear that the petitioner is not the person he is claiming to be as is evident from his Pan Card, Aadhar Card, Special B.T.C. training 2008 Certificate, academic documents, residential and scheduled caste certificates, wherein name has been mentioned differently.

26. It is clear from the aforesaid decisions of the Hon’ble Supreme Court that the application of the principles of natural justice depends upon the relevant facts and circumstances of the case and whenever a complaint is made about its violation, the Court has to decide whether the observance of that Rule was necessary for a just decision on the facts of the case. The Supreme Court also noticed that there can be a situation where persons who are not even eligible for being appointed are appointed and in such a situation, if such persons are discontinued it would not be a punitive measure because they have been

discontinued as they had infact never been appointed. In fact, it has been held, that they do not hold any right over the post and, therefore, are not entitled for any hearing. The decision also holds that where facts are admitted, an enquiry would be an empty formality.

27. Appointments obtained through fraudulent means are considered *void ab initio*, meaning they are null and void from the beginning. Such appointments are not recognized by law, and the individual holding the appointment is not entitled to any benefits or protection. Any benefits obtained through fraudulent means, including salary, allowances, and other emoluments, must be returned to the employer or the State. The individual is not entitled to retain any benefits derived from a fraudulent appointment.

28. In the present case, upon perusal of the records, discrepancies in the petitioner's name across various documents have been noted, specifically:

- “1. PAN Card: "Kamlesh Kumar"
2. Aadhar Card: "Kamlesh"
3. Special B.T.C. Training 2008 certificate: "Kamlesh Kumar"
4. Academic documents: "Kamlesh Kumar Nirankari s/o Ram Tahal Ram"
5. Residential and Scheduled Caste certificates: "Kamlesh Kumar" s/o Ramtahal”

29. These discrepancies raise concerns regarding the authenticity and validity of the documents and the petitioner's appointment.

30. The petitioner has failed to establish the authenticity of his academic documents, and discrepancies in his name across vital records reveal a *prima facie* case of fraud. The petitioner's inability to produce genuine documents, coupled with the misuse of documents belonging to some other, i.e. Kamlesh Kumar Yadav, confirms that the appointment was obtained through fraudulent means.

31. It is clear from the records that documents of complainant (who got selected somewhere else) have been used by petitioner to obtain

appointment in place of complainant using his name.

32. In the present case, the verification report categorically records that the documents submitted by the petitioner were forged. The petitioner was issued a show-cause notice and was called upon to produce the original certificates, but he failed to do so. In these circumstances, the respondents were justified in concluding that the appointment had been procured by fraudulent means.

33. The contention that a full departmental enquiry ought to have been held is without merit. Once it is established that the very entry into service was vitiated by fraud, there is no “termination” in the strict sense, but only a declaration that no valid appointment ever existed. The requirement of an elaborate enquiry, as mandated for proven misconduct of a regular employee, has no application to such cases.

34. In this view of the matter, when the petitioner had produced forged documents for getting appointment and nothing has been pointed out to controvert the findings recorded in the impugned order, the petitioner is not entitled to grant any relief as prayed.

35. Thus, where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he/she becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void *ab initio*. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise.

36. The forgery committed by the petitioner, for obtaining public employment on the basis of forged educational documents is the basic eligibility condition for appointment on the post of Assistant Teacher. Therefore, it vitiates the process of his appointment. Thus, the

appointment of the petitioner is void ab initio and he cannot be said to be a government servant. Therefore, his appointment has been lawfully cancelled by the impugned order.

37. For all the reasons aforesaid, I do not find any error of law in the impugned order dated 06.10.2022, which has been passed by the respondent no.2. Therefore, the writ petition is, accordingly, **dismissed.**

(Manju Rani Chauhan, J.)

Order Date :- 25.08.2025
Jitendra/-