IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 19th OF MARCH, 2024

WRIT APPEAL No. 623 of 2024

BETWEEN:-

RAKESH PANDEY
ABOUT 57 YEARS

.....APPELLANT

(BY SHRI MANOJ SHARMA - SENIOR ADVOCATE WITH SHRI QUAZI FAKHRUDDIN - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY SCHOOL EDUCATION DEPARTMENT MANTRALAYA VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **STATE OF M.P. THROUGH THE COMMISSIONER, REWA REVENUE DEPARTMENT DISTRICT REWA (MADHYA PRADESH)**

3. **STATE OF MADHYA PRADESH THROUGH COLLECTOR, SIDHI DISTRICT SIDHI (MADHYA PRADESH)**

4. **SHAKUNTALA PANDEY**

.....RESPONDENTS

(SHRI ANUBHAV JAIN - GOVERNMENT ADVOCATE FOR RESPONDENTS NO.1, 2 AND 3)

This appeal coming on for admission this day, ***Hon'ble Shri Justice Vishal Mishra*** *passed the following:*

ORDER

Assailing the order dated 07.03.2024 passed by the learned Single Judge in dismissing Writ Petition No.11019 of 2019 in analogous hearing with other petitions, the writ petitioner is in appeal.

2. It is the case of the petitioner that he was employed in the respondent/department on the post of Samvida Shala Shikshak Grade-III in the year 2011. It is pointed out that the respondent No.4 was the Chairman of the agriculture committee at Janpad Panchayat, Rampur Naikin who has preferred a revision petition before the Commissioner Rewa against the appointment of the four persons including that of petitioner on the ground that the appointments have been made contrary to the rules and selection procedure has not been followed. Further no verification was got conducted regarding educational qualification of these persons. Along with revision an application under Section 5 of the Limitation Act was filed but the learned Commissioner without considering the aforesaid application and without deciding the application under Section 5 of the Limitation Act has passed the impugned order which is not in consonance with the settled principles of law. A writ petition filed by one Virendra Singh is pending consideration before the Hon'ble High Court and without considering the same, the learned Commissioner has taken cognizance into the matter and has passed the impugned order without even waiting for the outcome of the petition pending before this Court, therefore, the writ petition was filed.

3. The learned Writ Court has taken up the matter in analogous hearing along with other writ petitions and has dismissed all the writ petitions upholding the

order passed by the learned Commissioner. As far as the case of Rakesh Pandey is concerned, the writ appeal has been filed on the ground that they were appointees of 2011 and they are working on the post of Samvida Shala Shikshak, therefore, the appointment being contractual in nature does not attract the strict rules of service jurisprudence to be followed. Even otherwise, the revision was filed after a long period of time without there being any explanation for the delay and the learned Commissioner without even deciding the application under Section 5 of the Limitation Act has passed the impugned order thereby terminating the services of the petitioner as well as directing for registration of an FIR against the concerning as well as the authorities who were found involved in the procedure for grant of appointment to the post of Samvida Shala Shikshak.

4. No notice of the revisions has been issued to the affected parties neither they have been provided any opportunity of hearing and the direction for registration of an FIR has been issued. The same is contrary to the principles of natural justice and fair play. The revision before the Commissioner was filed by a stranger who is having no nexus to the appointments. The revision filed by a stranger itself was not maintainable. The learned Writ Court has failed to consider all these aspects and passed the impugned order on the ground that no procedure was followed for grant of appointment to the post in question. Neither advertisement was issued nor their educational qualification was got verified nor the procedure as contemplated under the Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 and Madhya Pradesh Panchayat Shiksha Karmi Recruitment and Condition of Service Rules, 1997 has been followed. The Rules are having a statutory force therefore, a revision on the ground of no qualification and recruitment procedure not followed, could have

been filed. Even the writ of quo warranto could have been filed by the third person seeking quashment of the appointment orders but the fact remains that no opportunity of hearing was granted to the petitioner and even the authorities have played some role in grant of appointment to the petitioner. Therefore, the appeal is filed.

5. Per contra, learned counsel appearing for the State has vehemently opposed the contentions and supported the impugned order. It is pointed out that writ of quo warranto can be filed by a third person and could be held maintainable. The services of Samvida Shala Shikshak are governed by Madhya Pradesh Samvida Shala Shikshak (Appointment and Conditions of Contract) Rules, 2001 and Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997. They are having a statutory force, therefore, it cannot be said that they are merely a contractual employee. They are being appointed under the fixed set of rules. He has drawn attention of this Court to the order passed by the Commissioner wherein a specific finding is given that without issuance of advertisement, without constitution of the Committee, without following the reservation roster, without verification of the documents and the educational qualification and in a most arbitrary manner the appointments have been granted, therefore, has rightly quashed the appointment orders of the petitioner and directed for registration of a criminal case against them including that of the authorities who have been found involved in grant of appointment. He has prayed for dismissal of the appeal.

6. Heard the learned counsels for the parties and perused the record.

7. The record indicates that a challenge is made to the appointments on the post of Samvida Shala Shikshak Grade-III. The appointment of Samvida Shala

Shikshak are being governed by Madhya Pradesh Panchayat Shiksha Karmi (Recruitment and Condition of Service) Rules, 1997 having a statutory force. The procedure as provided for grant of appointment contemplates the issuance of an advertisement, constitution of committee, provides for educational qualification, verification of documents and the reservation roster to be followed in the matter. The revision is being filed before the learned Commissioner by a third person. As soon as the factum of big fraud being played and illegal appointments being granted, the revision was filed before the Commissioner. The Commissioner called for the entire record from the Collector with respect to grant of appointment to the petitioner and three other candidates and after scrutiny of the entire record has given a specific finding which is as under :-

13. उपरोक्त विवेचना के आधार पर मै इस निष्कर्ष पर पहुॅचता हूॅ कि इस प्रकरण मे निम्न त्रुटियां एवं नियम विरूद्ध कार्यवाही की गई हैः–

(1) शासन द्वारा संविदा शाला शिक्षक वर्ग–3 की नियुक्ति हेतु विहित प्रक्रिया का पालन न करते हुए भरती नियम के विपरीत की गई।

(2) नियुक्ति हेतु चयन समिति का गठन नहीं किया गया।

(3) अनावेदकगण की नियुक्ति बिना विज्ञापन निकाले की गई।

(4) प्रथम आवेदन जो दीपा पाण्डेय द्वारा कलेक्टर सीधी के समक्ष प्रस्तुत किया गया, उसमें पृथक से हैण्ड रायटिंग से सतीश पाण्डेय का नाम जोड ा गया है। दूसरे आवेदक राजजेश कुमार साहू द्वारा कलेक्टर सीधी को प्रस्तुत आवेदन में कलेक्टर की मार्किंग नहीं है तथा उसमें विभा शर्मा का नाम पृथक से हैंडरायटिंग से जोड ा गया है।

(5) अभिलेखों में जानबूझकर कूटरचना कर आदेश दिनांक 03.04.2011 द्वारा अनावेदक सतीश कुमार पाण्डेय संविदा शाला शिक्षक वर्ग–3, दीपा पाण्डेय पिता राजेन्द्र पाण्डेय संविदा शाला शिक्षक वर्ग–3 एवं आदेश दिनांक 15.04.2011 द्वारा राजेश कुमार साहू तनय रामदुलारे साहू संविदा शाला शिक्षक वर्ग–3 विभा शर्मा पुत्री तुलसीदास शर्मा संविदा शाला शिक्षक वर्ग–3 में की गई नियुक्ति अवैध त्रुटिपूर्ण तथा अभिलेखों में कूटरचना कर विहित प्रक्रिया के विपरीत है।

अतः अनावेदक क्रमांक 2, 3, 4 एवं 5 की संविदा शाला शिक्षक वर्ग–3 के पद पर की गई नियुक्ति तत्काल प्रभाव से निरस्त कर अनावेदकगणों को नियुक्ति दिनांक से अब तक भुगतान किये गये वेतन भत्ते मय ब्याज राजस्व वसूली की भॉति वसूल किये जाने के आदेश दिये जाते है। नियमों के विपरीत अवैध नियुक्त करने में संलग्न तत्कालीन मुख्य कार्यपालन अधिकारी जनपद पंचायत रामपुर नैकिन जिला सीधी, जिला शिक्षा अधिकारी जिला सीधी, विकास खण्ड शिक्षा अधिकारी जनपद पंचायत रामपुर नैकिन जिला सीधी तथा भर्ती प्रक्रिया में संलग्न अधिकारियों/कर्मचारियों द्वारा अपनी अधिकारिता से परे जाकर नियुक्ति प्रदान कर शासन को आर्थिक क्षति कारित करने तथा अनावेदकगणों के साथ मिलकर अभिलेखों में हेराफेरी, कूटरचना एवं धोखाधड ी किये जाने के आरोप में संबंधित पुलिस थाने में एफ.आई.आर. दर्ज

कराने के आदेश दिये जाते हैं। तदुनुसार कलेक्टर जिला सीधी 15 दिवस मे कार्यवाही करना सुनिश्चित करें। आदेश प्रति के साथ मुख्य कार्यपालन अधिकारी जनपद पंचायत रामपुर नैकिन से प्राप्त मूल नस्ती कलेक्टर सीधी को उपरोक्त कार्यवाही हेतु भेजी जाए तथा आदेश की प्रति मुख्य कार्यपालन अधिकारी जिला पंचायत सीधी एवं मुख्य कार्यपालन अधिकारी जनपद पंचायत रामपुर नैकिन जिला सीधी को भी भेजी जाए। तत्पश्चात् प्रकरण इस न्यायालय की दायरा पंजी से समाप्त कर अभिलेखागार में संचित किया जाए।

8. Thus, there is a specific finding given by the Commissioner that no procedure was adopted for grant of appointment and in a most arbitrary manner the appointment orders have been issued.

9. The record produced before the learned Commissioner, as well as material pointed out before this Court could not be countered or denied by the appellants. The only arguments which are raised are that they are working since 2011 and working since long the revision has been filed by a third party who has no nexus with the appointments, the revision itself was not maintainable, as there was a huge delay in approaching the authorities. The application under Section 5 of the Limitation Act has not been decided. The fact remains that the entire procedure for grant of appointment to the petitioner including three other persons was done by playing fraud. No procedure has been followed by the authorities. No advertisement was issued. No application were called for, the educational qualification were not even scrutinized, no verification of documents was done etc. It is a trite law that frauds vitiates everything. If the appointment is being issued without following the due procedure and a fraud has been played for getting an appointment order, then appointment order itself is a nullity and void ab initio. The learned Commissioner has taken note of all the aspects of the matter and has rightly passed the impugned order holding the revision to be maintainable. Mere fact that there is no specific order as far as limitation is concerned, the same is only a technicality and will not give any right to the petitioner to take advantage of the same specially in the event when the

appointment is being obtained by playing fraud and connivance with the authorities. The entire record which has been produced before the Commissioner has clearly been spelt out in the order, no justification could be granted by the petitioner or the same has been denied by the State counsel. The State Government has not approached the Court challenging the order passed by the Commissioner which clearly goes to show that they are satisfied with the order passed by the Commissioner. Counsel appearing for the writ petitioner as well as the counsel appearing for the State could not dispute the fact that the procedure has not been followed in the matter. Once there is a specific finding given by the Commissioner to the aforesaid effect, no relief can be extended to the petitioner.

10. The law is settled with respect to grant of appointments or obtaining of benefits by playing fraud. The Hon'ble supreme Court in the case of **A.V.Papayya Sastry and others Vs. Govt. of A.P. and others** reported in **(2007) 4 SCC 221** has held as under :-

> *"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."*

11. The Hon'ble Supreme Court in the case of **Union of India and others Vs. Ramesh Gandhi** reported in **(2012) 1 SCC 476** has held as under :-

> *"24. Coming to the judgment under appeal, as it is already noticed that the High Court quashed the FIR only on the ground that the supply of coal had been obtained in terms of a decision given by the Calcutta High Court and approved by this Court and for the said reason no Magistrate can, therefore, decide whether any unjust pecuniary advantage was made available to the private company. For coming to such a conclusion, the learned Judge made an "elaborate examination" of the Indian legal system. But, in our*

opinion, the entire enquiry proceeded on a wrong premise that no examination, as to how a judgment of a superior court came into existence, is permissible in the system of law which we follow.

25. This Court on more than one occasion held that fraud vitiates everything including judicial acts. In S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1] , this Court observed as follows: (SCC p. 2, para 1)

> ***1. Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law. Such a judgment/decree—by the first court or by the highest court—has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.***

26. Again in A.V. Papayya Sastry v. Govt. of A.P. [(2007) 4 SCC 221 : AIR 2007 SC 1546] this Court reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows: (SCC pp. 236-37).

> *38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the applicant plaintiff which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.*
>
> ***39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.***

27. If a judgment obtained by playing fraud on the court is a nullity and is to be treated as non est by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the court by

not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest.

28. Therefore, the conclusion reached by the judgment under appeal that no court can examine the correctness of the contents of the impugned FIR, is unsustainable and without any basis in law. The very complaint in the FIR is that the judgment of the Calcutta High Court, as affirmed by this Court, is a consequence of a deliberate and dishonest suppression of the relevant facts necessary for adjudicating the rights and obligations of the parties to the said litigation.

29. Coming to the question as to what amounts to securing a judgment by playing fraud in the court, in Chengalvaraya Naidu [(1994) 1 SCC 1] , this Court categorically held that the non-disclosure of all the necessary facts tantamounts to playing fraud on the courts. In para 6 of the said judgment, it was held as follows: (SCC p. 5)

> *6. ... If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.*

30. The allegation in the FIR is that the various accused deliberately withheld/suppressed the fact that the private company, by the time it approached the Calcutta High Court in Writ Petitions Nos. 940 and 941 of 1994, had already committed breach of its obligations arising out of the contracts from which the entire litigation arose, a fact which is greatly relevant in deciding the entitlement of the private company to seek various reliefs such as the ones sought by it before the Calcutta High Court. It is further specific allegation in the FIR that such a non-disclosure/suppression of the crucial fact was wilful and deliberate pursuant to a conspiracy between all the accused to secure an illegal and wrongful monetary gain to the private company. Therefore, in our opinion the judgment under appeal cannot be sustained."

12. Even in the case of **Mansukh Lal Saraf Vs. Arun Kumar Tiwari and others** reported in **2016 (2) MPLJ 283**, the Division Bench of this Court has held the petition to be maintainable in service matters as far as writ of quo warranto is concerned. The matter traveled upto the Hon'ble Supreme Court and the Hon'ble Supreme Court has also upheld the order passed in the case of

Mansukh Lal Saraf (supra). The same was considered by the learned Writ Court. Therefore, there is no illegality in quashing the order of appointment of the petitioner as well as other three candidates. Now the question for consideration is whether a direction can be issued for registration of an FIR. Once it is held that the fraud has been played in granting appointment to the petitioner as well as other three candidates, the authorities have played a vital role in granting appointment to the petitioners and others. They themselves have not followed the procedure. No explanation could be given by the State counsel to the aforesaid aspects. They are the authorities who are being represented by the State counsel. The State counsel was supposed to defend their act of granting appointment to the petitioner and others. The record before the Commissioner has reflected otherwise. Therefore, once their involvement in granting appointment to the petitioner is being reflected from record, the direction for registration of an FIR does not warrant any interference. It is the settled law that once the congnizable offence is being pointed to the police authorities then they are duty bound to register an FIR. Even otherwise prior to registration of an FIR, no opportunity of hearing to be granted to the concerning in terms of the settled principles of law. The aforesaid aspect was considered by the Division Bench of this Court while answering the reference on 26.09.2019 in the case of Arvind Kumar Gautam Vs. State of Madhya Pradesh M.Cr.C.No.13679 of 2019 wherein the Hon'ble Division Bench of this Court has held as under :-

> *"10. When this Clause is examined in the light of paragraph 30 to 33 of the judgment rendered by the Hon'ble Supreme Court in the case of Anuj Choudhary Vs. State of U.P. as reported in (2013) 6 SCC 384, wherein placing reliance on the judgment of Union of India Vs. W.N.Chadha – AIR 1993 SC 1082, Hon'ble Court has laid down the law after discussing two facts, firstly, Code of Criminal Procedure does not provide for any such right of prior hearing at*

that stage and secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. For ready reference, paragraphs 30 to 33 of the aforesaid judgment are as under:-

30. Section 154 of the Code places an unequivocal duty upon the police officer-in-charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in State of Uttar Pradesh v. Bhagwant Kishore Joshi, a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of an FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty-bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

31. The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the first information report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer-in-charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the officer-in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the

pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in Union of India v. W.N.Chadha clearly spelled out this principle in paragraph 98 of the judgment that reads as under:- (SCC p.293)

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

32. In Samaj Parivartan Samuday v. State of Karnataka, a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as "suspect" or "likely offender" in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under : (SCC p.426, para 50) 50. There is no provision in CrPC. where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners.

33. While examining the abovestated principles in conjunction with the scheme of the Code, particularly Section 154 and 156 (3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused

only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage."

13. The learned Writ Court has rightly taken note of all the aspects of the matter and has dismissed the writ petition. No interference is called for in a well reasoned order passed by the learned Writ Court. The petitioner as well as the other authorities will be having ample opportunity to defend themselves in the criminal case if registered against them.

14. The writ appeal stands dismissed. No order as to costs.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

AM