

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

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DATED THIS THE 7TH DAY OF FEBRUARY, 2020

PRESENT

THE HON'BLE MR.JUSTICE G.NARENDAR

AND

THE HON'BLE MR.JUSTICE M.NAGAPRASANNA

WRIT PETITION No.205496 OF 2019 (S-KAT)

BETWEEN:

ASHOK KUMAR
SON OF LAXMAN RAO,
AGED ABOUT 49 YEARS,
OCCUPATION ASST. PUBLIC PROSECUTOR
-CUM-ASST. GOVERNMENT PLEADER
AT CIVIL JUDGE (JR.DN.) &
JMFC COURT, SEDAM,
RESIDENT OF H.NO.44,
GOKULA NAGAR,
GDA EXTENSION,
NEAR SHAHA BAZAAR,
KALABURAGI.

... PETITIONER

(BY SRI P.VILASKUMAR MARTHAND RAO, ADVOCATE)

AND:

1. THE PRINCIPAL SECRETARY,
HOME DEPARTMENT,

VIDHANA SOUDHA,
BENGALURU – 560 001.

2. THE SECRETARY,
ASST.PUBLIC PROSECUTOR – CUM-
ASSISTANT GOVERNMENT PLEADER
SELECTION COMMITTEE,
DEPARTMENT OF PROSECUTION
AND GOVERNMENT DISPUTES,
6TH FLOOR, KAVERI BHAVAN,
KHB COMPLEX,
KHB ROAD, BENGALURU – 560 009.
3. REVANNA P.C.
S/O LATE CHALUVAIAH,
AGE 40 YEARS,
PRACTICING AS AN ADVOCATE,
RESIDING AT PATTASOMANAHALLI
VILLAGE AND POST, PANDAVAPURA TALUKA,
MANDYA DISTRICT – 571 434.

... RESPONDENTS

(BY SMT. ANURADHA M. DESAI, GOVT. ADVOCATE FOR
R-1 AND 2
SRI THYAGARAJA S., ADVOCATE FOR ^w
SRI R. PADMANABHA, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA
PRAYING TO ISSUE A WRIT OF CERTIORARI FOR
SETTING ASIDE THE ORDER PASSED BY THE
KARNATAKA ADMINISTRATIVE TRIBUNAL, BENGALURU
IN APPLICATION NO.4005 OF 2010 DATED 24.10.2019,
WHICH IS AT ANNEXURE – B AND CONSEQUENTLY
ORDER FOR CONTINUATION OF PETITIONER AS
ASSISTANT PUBLIC PROSECUTOR – CUM – ASSISTANT
GOVERNMENT PLEADER AS PER THE APPOINTMENT

ORDER ISSUED TO HIM DATED 10.11.2010 AT ANNEXURE-R2, IN THE INTEREST OF JUSTICE OR ISSUE ANY OTHER WRIT OR ORDER FOR WHICH THE PETITIONER FOUND ENTITLED TO BE AWARDED.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 27.01.2020, COMING ON THIS DAY, **M.NAGAPRASANNA J.**, PRONOUNCED THE FOLLOWING:-

ORDER

Aggrieved by the order dated 24.10.2019 passed by the Karnataka State Administrative Tribunal at Bengaluru in application No.4005 of 2010, whereby the Tribunal allowed the application, quashed the appointment of the 3rd respondent to the post of Assistant Public Prosecutor cum Assistant Government Pleader and, as a consequence, directed the State to consider the case of the applicant for appointment, the 3rd respondent therein has preferred the instant writ petition.

2. The parties will be referred to as per their ranking in the application before the Karnataka State Administrative Tribunal ('Tribunal' for short).

3. Brief facts of the case are as follows:

The 2nd respondent-Department of Prosecution and Government Disputes, issued a recruitment notification on 18.6.2009 calling for applications from eligible candidates for recruitment to 144 posts of Assistant Public Prosecutor Cum Assistant Government Pleader ('APP-cum-AGP' for short) under the quota reserved for the Scheduled Castes, both the applicant and the 3rd respondent finding themselves eligible to be considered to the said post, applied. Consequent upon the scrutiny of the applications, written test was held on 7.11.2009 and 8.11.2009, after which, interview/viva-voce was conducted.

4. After the conduct of interview/viva-voce, a list of candidates and the total marks obtained by them, both in the written examination and the viva voce, was notified by the 2nd respondent, as per Annexure-A2. In terms of the said notification of marks obtained by all the candidates, the applicant was at Sl. No.281 and his marks was shown as 86.20. Likewise, the 3rd respondent was at Sl. No.691 with his marks at 84.40. Pursuant to the notification of the said marks list, a provisional selection list was notified by the 2nd respondent on 12.4.2010. Surprisingly, the name of the applicant was not found in the said list, but the name of the 3rd respondent figured at Sl. No.130 and his marks were shown to be 87.40 as against 84.40 that had been published, when the marks were initially notified.

5. The applicant submitted his objection to the provisional selection list contending that the 3rd respondent has secured only 84.40 and the applicant

has secured 86.20. The marks were, a combination of both the written test and the viva-voce. But, the provisional selection list that was notified by the 2nd respondent on 12.4.2010 reflected the name of the 3rd respondent, with an inflated marks of 87.40. The representation/objection of the applicant was not considered and on that grievance, the applicant approached the Tribunal in application No.4005 of 2010, seeking the following prayers:

(i) To call for records pertaining to selection and appointment to posts of Assistant Public Prosecutor – cum – Assistant Government Pleader pursuant to Recruitment Notification dated 18.6.2009;

(ii) To direct Respondents 1 and 2 to select and appoint the Applicant to the post of Assistant Public Prosecutor – cum – Assistant Government Pleader by including his name in the provisional and final selection list under Scheduled Caste category and issue

appointment order and grant him all consequential benefits;

(iii) To set aside selection of Respondent No.3 to the said post vide serial No.130 of provisional selection list dated 12.4.2010 and to direct Respondent No.2 to consider and dispose of objections dated 18.6.2010 filed by the Applicant to the provisional selection list vide Annexure A – 5 before finalization of selection list.

6. The Tribunal, on consideration of the entire material and the contentions advanced before it, formulated the following points for considerations:

(i) Whether the applicant is unjustly denied selection and appointment to the post of APP-cum-AGP and if so to what relief he is entitled ?

(ii) Whether the selection of respondent No.3 calls for our interference ?

7. The Tribunal, in answer to the said points, quashed the selection of the 3rd respondent and directed

consideration of the applicant to the post of APP-cum-AGP on the ground that the entire appointment of the 3rd respondent to the post of APP-cum-AGP was on account of systematic fraud committed by the Selection Authority. The records pertaining to the selection process were not produced before the Tribunal. The Tribunal also observed that the 3rd respondent, securing lower marks, could not have been appointed to the said post and the applicant deserved to be appointed as he was higher in merit. The Tribunal also awarded a compensation quantified at Rs.10.00 lakhs to be paid to the applicant by the 1st respondent State Government and further declared that the applicant was entitled to be considered to be appointed to the post of APP-cum-AGP.

8. The order of the Tribunal reads thus:

(i) Application is allowed. Provisional selection of Respondent No.3 for the post of

Assistant Public Prosecutor – cum – Assistant Government Pleader as per the provisional selection list (vide serial No.130) for the said post, published vide Notification No.DPN/RC-01/2008-09 dated 12.4.2010 at Annexure A-3 and his final selection to the said post (vide serial No.130) as per Notification bearing No.DPN.Rc-01.2008-09 dated 26.10.2010 at Annexure R-1, both on the file of Respondent No.2, are quashed. Consequently, appointment of Respondent No.3 as Assistant Public Prosecutor – cum – Assistant Government Pleader as per order dated 30.10.2010 also stands annulled.

(ii) That Respondents No.1 and 2 are directed to consider the candidature of the Applicant for the post of Assistant Public Prosecutor – cum – Assistant Government Pleader within two months from the date of receipt of certified copy of this order.

(iii) Respondent No.1 is also directed to pay compensation and cost together amounting to Rs.10.00 lakhs to the applicant within two months from the date of receipt of certified copy of this order.

(iv) Seniority of the applicant in the cadre of Assistant Public Prosecutor – cum – Assistant Government pleader shall be from the date of his reporting for duty.

9. Being aggrieved by the afore-extracted order of the Tribunal, the 3rd respondent-appointee has preferred the instant writ petition.

10. We have heard Sri Vilas Kumar Marthand Rao, learned counsel appearing for the petitioner, Smt. Anuradha M. Desai, learned Government Advocate appearing for respondent Nos.1 and 2 and Sri Thyagaraja S, learned Counsel appearing for Sri R. Padmanabha, learned Counsel for respondent No.3.

11. Learned Counsel for the 3rd respondent would contend that the Tribunal has erred in quashing the provisional selection list insofar as it pertains to the appointment of the 3rd respondent and further directing

that the candidature of the applicant be considered to the post of APP-cum-AGP within two months and other consequential directions. The finding of the Tribunal that the appointment of the 3rd respondent was on account of systematic fraud by the Selection Authority, was without any basis, as the alteration of marks was only correction of a typographical error, and even if it be so, it was the Selection Authority that can be alleged to have indulged in fraud, in which the 3rd respondent was in no way responsible and he was an innocent participant in the selection process.

12. Learned Counsel for the 3rd respondent would further contend that on the ground of equity, in the light of the selection of the 3rd respondent ten years ago, his appointment should not be disturbed as no fault lies with him for being appointed and the appointment being quashed on the ground that it is a product of the systematic fraud, cannot be attributed to him.

To buttress his submission, the learned Counsel would place reliance on the following judgments:

1. *Parmanand Singh Vs. Union of India and others - (2009)3 SCC 271*

2. *Smt. Thasleema F Vs. The State of Karnataka and others in W.P No.14218 of 2011 decided on 07.06.2011.*

13. Per contra, learned Counsel appearing for the applicant would contend that the marks secured by the applicant were, way higher than the marks secured by the 3rd respondent. In the marks list notified, which were a combination both written test and viva-voce, the name of the applicant was figured at Sl. No.281 with 86.20 marks and the 3rd respondent was shown at Sl.No.691 with 84.40 marks.

14. It is the submission of the learned counsel that when the marks of the 3rd respondent were initially shown as 84.40, the applicant did not protest this action

and accepted the marks that were notified. On the other hand, when the provisional selection list were notified on 12.4.2010, the applicant's name was not found and the name of the 3rd respondent was shown in the said list with the inflated marks of 87.40, the applicant immediately registered his protest by giving a detailed objection statement to the provisional selection list as to how it was illegal. The learned Counsel further contends that the applicant has been denied appointment due to the illegal action of the Selection Authority, but for the inflated marks, the applicant would have been appointed as APP-cum-AGP and the 3rd respondent is the direct beneficiary of the fraud played by the Selection Authority.

15. Learned Government Advocate appearing for respondent Nos.1 and 2-State submits that the order of the Tribunal is erroneous and contrary to the facts. It is the submission of the State that it was well within the

power to rectify the mistake that had crept in the case of the 3rd respondent and as a consequence of such rectification, the appointment was given to the 3rd respondent. It is further contended that the Tribunal could not have sat in judgment over the wisdom of the Selection Authority in selecting the 3rd respondent, as it was impermissible in law to do so and vehemently, contends that awarding of compensation of Rs.10.00 lakhs payable by the State to the applicant, is unwarranted and erroneous.

16. We have given our anxious consideration to the material on record and the contentions advanced by all the parties before us and on consideration of the same, the following points would arise for our consideration:

1. *Whether the appointment of the 3rd respondent to the post of APP-cum-AGP was legal and valid ?*

2. *Whether the Tribunal was justified in interfering with the selection of the 3rd respondent and imposing the cost of Rs.10.00 lakhs upon the State Government to be paid to the applicant ?*

3. *Whether the appointment of the 3rd respondent should be saved ?*

17. **Re. Point No.1:**

The recruitment notification was issued by the Department of Prosecution and Government Disputes on 18.6.2009 calling for applications from the eligible candidates for recruitment to 144 posts of APP-cum-AGP. The applicant and the 3rd respondent, both belong to Scheduled Caste. The format of the examination was written test and viva-voce. The written test was conducted on 7.11.2009 and 8.11.2009, after which the interview/viva-voce was conducted. Pursuant to the

conduct of the written test and viva-voce, the 2nd respondent notified the marks obtained by each of the candidates. The notification published was captioned and reads thus:

"List of candidates and marks obtained in written examination and viva-voce examination for the vacant posts of APP-cum-AGP in the department of prosecutions and Govt. Litigations in Karnataka vide notification No. ಸಸಅ 01 ಆರ್‌ಸಿ 2009, ದಿನಾಂಕ 18ನೇ ಜೂನ್ 2009."

18. On a plain reading of the title of the notification, makes it unmistakably clear that it was an amalgam of the marks obtained in the written test and viva-voce. In the said notification, the name of the applicant at Sl.No.281, depicted as follows:

Sl. No.	Reg.No.	Name of the candidate	Total Marks
281	1342	Revanna PC.	86.20

In juxtaposition, the name of the 3rd respondent is shown at No.691 and his credentials read thus:

Sl. No.	Reg.No.	Name of the candidate	Total Marks
691	3598	Ashok Kumar Lakshman Rac	84.40

The tables extracted herein above would make two facts clear, first, the marks were a combination of the written test and viva-voce, and second, the marks of the 3rd respondent was way lower than that of the applicant.

19. In terms of the marks indicated, the applicant ought to have been selected. The State Government, issued a notification notifying the provisional selection list on 26.10.2010. In the provisional selection list, surprisingly, the name of the applicant did not figure. But the name of the 3rd respondent was shown at Sl. No.130 as provisionally selected to the post of APP-cum-AGP, what is more shocking is that, his marks which was

at 84.40 were inflated to 87.40. The name of the applicant who was higher in marks was placed in the additional provisional selection list at Sl. No.13 with his marks remaining the same, namely 86.20. Thus, it was a clear case where the marks of the 3rd respondent were inflated in order to bring him into the zone of consideration and have shown him selected.

20. The applicant protested to the said action immediately, stating that the name of the 3rd respondent could not have been shown in the provisional selection list, as the applicant was more meritorious than the 3rd respondent. The objections were not considered. At that stage, the applicant approached the Tribunal in application No.4005 of 2010 seeking an interim prayer not to finalize the selection list and not to issue the order of appointment to the 3rd respondent. Since the interim order was not granted, the respondent-State issued the appointment order in favour of the 3rd

respondent on 30.10.2010 and it transpires that, pursuant to his order of appointment, the 3rd respondent reported to duties, on 11.11.2010 at Shorapur.

21. During the course of hearing of the matter before the Tribunal, in order to scrutinise as to how the marks of the 3rd respondent were inflated from 84.40 to 87.40, original records were summoned, and in reply to the summoning of the records, the Secretary of the APP-cum-AGP Selection Recruitment Committee, communicated by his letter dated 29.8.2018 that the original answer scripts of the 3rd respondent was not available as the Committee had taken a decision to destroy the same in respect of APP-cum-AGP selection. An affidavit dated 16.10.2019 was also filed to that effect by III Additional Public Prosecutor, City Civil and Sessions Court, Bengaluru. To this letter, a note sheet maintained pertaining to the decision to destroy was also enclosed. The other document that was enclosed

was a separate merit list insofar as the candidates belonging to the Scheduled Caste category, in which the name of the 3rd respondent was shown at Sl.No.16 where his marks were inflated to 87.40. It is on the strength of this document, the learned Counsel for the 3rd respondent and the Government, in unison, contend that an inadvertent mistake had crept in, by way of a typographical error, when the first notification was issued displaying the marks as 84.40, which was corrected later by adding 3.40 viva-voce marks, which took the total marks of the 3rd respondent to 87.40.

22. The tables showing marks obtained by the 3rd respondent from the inception till the selection are extracted for ready reference.

The marks obtained at the inception:

Sl. No.	Reg.No.	Name of the candidate	Total Marks
691	3598	Ashok Kumar Lakshman Rao	84.40

Marks changed in SC category selection list
dated 12.4.2010

Sl. No.	Reg. No.	Name of the candidate	Gender	Date of birth	Reserva-tion	Written exam marks	Viva Voce exam marks	Total Marks	Remarks
16	3598	Ashok Kumar Lakshman Rao	Male	6.12.1971	SC	34.00	3.40	87.40	SC-GM-8

Marks in the provisional selection List
dated 26.10.2010 issued by the 2nd respondent

ಕ್ರಮ ಸಂಖ್ಯೆ	ನಾಂದಣಿ ಸಂಖ್ಯೆ	ಅಭ್ಯರ್ಥಿಯ ಹೆಸರು ಮತ್ತು ವಿಳಾಸ ಶ್ರೀ / ಶ್ರೀಮತಿ	ಲಿಂಗ	ಜನ್ಮ ದಿನಾಂಕ	ಮೀಸಲಾತಿ	ಅಂಕಗಳು
(130)	3598	ಅಶೋಕ್ ಕುಮಾರ್ ಲಕ್ಷ್ಮಣರಾವ್ ನುನೆ ನಂ.44, ಗೋಕುಲ ನಗರ, ಬಿ.ಡಿ.ಎ. ಬಡಾವಣೆ, ಶಹಾಬಚಾರ ಹತ್ತಿರ, ಗುಲಬರ್ಗ	ಪುರುಷ	6.12.1971	ಪರಿಶಿಷ್ಟ ಜಾತಿ / ಸಾಮಾನ್ಯ	87.40

The afore-extracted tables would clearly show that the appointment of the 3rd respondent is illegal as the justification given by the Government in the list which is titled as the Scheduled Caste Category selection list shows the written examination marks obtained by the 3rd respondent as 84.00 and viva voce marks as 3.40 and the total as 87.40. If a bare look is had at the marks obtained by the 3rd respondent, how 84.40 became 84.00 is a mystery and how 84.40 did not contain the marks of the viva-voce despite the title of the notification reading it to be a combination of both

the written test and viva voce, is also unknown and no explanation is forthcoming. Thus, both the documents contradict each other, which is a clear case of fraud being played by the Selection Authority. But for the inflated marks, the 3rd respondent could not have been appointed to the post of APP-cum-AGP and inflated marks is a product of systematic fraud. To arrive at any other conclusion, the original records/answer scripts would have to be examined, but, the answer scripts of the 3rd respondent are destroyed in terms of the affidavit filed by the State. Thus, we hold that the appointment of the 3rd respondent as APP-cum-AGP was illegal and *void ab-initio* as he was not the candidate who had taken more marks than the applicant and the justification given by the Government with regard to the inadvertent mistake or a typographical error, is unacceptable to us.

Hence, we hold point No.1 in favour of the applicant.

23. **Re. Point No.2:**

The Tribunal has considered the matter in great detail and in the order impugned, has given cogent reasons to quash the appointment of the 3rd respondent and directing consideration of the appointment of the applicant. The Tribunal was justified in drawing adverse inference for non production of original records/answer scripts of the 3rd respondent since the stand of the State was that they were destroyed. While doing so, the Tribunal also awarded the compensation quantified at Rs.10.00 lakh, which is to be paid by the 1st respondent-State Government to the applicant.

24. Respondent No.1 is the Department of Home, represented by its Principal Secretary. The compensation is directed to be paid by the Government to the applicant. No doubt, the selection process, insofar as it pertains to the appointment of the 3rd

respondent, is vitiated by fraud for which the applicant, has been compensated by a direction to consider him for appointment. But the award of compensation by the Government to the applicant is improper, as it would amount to mulcting the State. Though the direction to pay compensation is valid, but not from the Government. The order of the Tribunal warrants interference only on this aspect of the matter. Our finding is that the fraud is committed by the selection Authority. Therefore, we direct the 1st respondent to satisfy the amount of compensation directed to be paid to the applicant, and then identify the officers responsible for commission of such fraud, hold an enquiry, fix responsibility and after following due process of law, recover the same from those officers, who are responsible for the commission of such fraud. Except the above stated modification, the remaining order of the Tribunal does not warrant any interference.

Hence, point No.2 is answered accordingly.

25. **Re. Point No.3:**

Learned Counsel for the 3rd respondent, as mentioned herein above, has submitted that the 3rd respondent is an innocent participant in the selection process and if at all, the Authority has committed fraud, the 3rd respondent is not a perpetrator of that fraud and his appointment should not be disturbed as he has rendered close to ten years of service as APP-cum-AGP. The learned Counsel places reliance upon the judgment of the Apex Court in the case of **PARMANAND SINGH Vs. UNION OF INDIA AND OTHERS** reported in **(2009)3 SCC 271**, wherein at paragraph-7, it is held as follows:

7. It is not disputed that the original documents were not produced before the authorities because the documents were with the institution i.e. Ramdayalu Singh College, Muzaffarpur and the appellant was not in a position to produce the original documents.

In view of the aforesaid it is not necessary to examine whether there is any requirement for producing the original documents as observed by the departmental authorities. Respondent No.6 is continuing in his job. Therefore, without disturbing his continuance, we direct that in case there is any vacancy in the nearby area where the appellant can be adjusted, the same can be done by the authorities after following the necessary norms. The appellant shall not be entitled to any back wages and the continuance of respondent No.6 shall not be disturbed."

26. He would further place reliance on the judgment of the learned Division Bench of this Court in the case **SMT. THASLEEMA F VS. THE STATE OF KARNATAKA AND OTHERS** in W.P No.14218 of 2011 decided on 07.06.2011, wherein the relevant paragraphs-4 and 5, read thus:

4. Having heard the learned counsel for the parties, this Court has noticed that for no

fault of the petitioner she has to loose her post. She was recruited on merits. The mistake is committed by the recruiting authority in not considering the qualification of R-6. Petitioner has been discharging her duty as a Hindi Teacher for the last three years and at this stage petitioner is directed to go out of employment, it would affect her entire family and her career. We would not have interfered with the orders of the tribunal if the petitioner has secured an appointment by mis-representation of facts. In the instant case, no such mis-representation is there on the part of the petitioner. So, in this background we had directed the Government Advocate to find out whether any vacancy is available under II-B category and if such vacancies are available under II-B category to a post of Hindi Teacher and if petitioner is posted to such existing vacancy, no hardship would be caused to the petitioner.

5. In the circumstances, this petition is disposed of with a direction to the

Government to find out whether the post of a Hindu Teacher under II-B category is vacant and if such vacancy is there, to consider the case of the petitioner to the said post and continue her services without any break.”

27. Placing reliance upon the afore-extracted judgments of the Apex Court and learned Division Bench of this Court, the learned Counsel for the 3rd respondent would contend that the appointment of the 3rd respondent should not be disturbed at this length of time. He submits that the aforementioned judgments are identical to the facts of the case on hand and are required to be followed. Without looking to the facts of the case accepting the submission of the learned Counsel for the 3rd respondent will run counter to the law declared by the Hon'ble Supreme Court in the case of **HARYANA FINANCIAL CORPORATION AND ANOTHER VS. JAGADAMBA OIL MILLS AND**

ANOTHER reported in **(2002)3 SCC 496**, wherein at paragraph Nos.20 to 22, it is observed as follows:

" 20. *In Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 (HL)] Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* [(1972) 2 WLR 537 [sub nom *British Railway Board v. Herrington*, (1972) 1 All ER 749 (HL)]] Lord Morris said: (All ER p. 761c)

' There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

21. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

22. *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)*

'19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

'Precedent should be followed only so far as it marks the path of

justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.' "

In terms of the law declared by the Hon'ble Supreme Court in the afore-extracted judgment, the facts of both the cases, relied on by the learned Counsel for the 3rd respondent, are required to be noticed.

28. The facts in the case of *Paramanda Singh (Supra)*, were that the original documents were not produced by the appellant therein because the documents were with the institution and the appellant therein was not in a position to produce at the relevant point of time and respondent No.6 had continued in his job. In those circumstances, the Hon'ble Supreme Court directed the continuance of the appointee and further

directed that in case, there is any vacancy, the appellant also could be accommodated. Thus, the facts before the Hon'ble Supreme Court were concerning the lacunae in the selection on a particular defect which was curable and not one of fraud.

29. The next judgment is of the learned Division Bench, in case of *Smt. Thasleema (Supra)*. The finding of the learned Division Bench was that the petitioner therein was recruited on merits. The mistake committed by the recruiting authority, in not considering the qualification of the 6th respondent with regard to his credentials, cannot be used to takeaway the employment of the petitioner therein. The learned Division Bench was categorical in observing that interference would be called for in the appointment, which was secured by misrepresentation of facts. Thus, the judgment of learned Division Bench in the case of

Smt. Thasleema (Supra), is also inapplicable to the facts of the present case.

The judgments relied on by learned Counsel for the 3rd respondent to save the appointment, in our considered view, are of no avail.

30. The 3rd respondent is the direct beneficiary of the fraud committed by the Selection Authority. In a case of fraud of this nature, if we yield to the submission made by the learned Counsel for the 3rd respondent, it would be misplaced sympathy and yielding to such sympathy will defeat the cold logic of law. If a person is not entitled to a right in law, the consequence of denying such a right to him cannot be the botheration of the law Courts. The law Courts exist to enforce law and not to thwart law or to perpetuate illegality. The delay in disposal of the case before the Courts cannot be a ground to protect an appointment that was illegal from

the inception. The Courts are to administer law as they find it however inconvenient it may be.

31. The selection is done by the State. It is highly regrettable that holders of the public office, both big and small, have forgotten that the offices entrusted to them are the sacred trusts. Such offices are made, to use and not abuse. It may not be too much for us to draw inference that the appointment of the 3rd respondent was motivated by extraneous considerations. The deeds of this nature by a Selection Authority are inconceivable in law. It is beyond cavil, that the appointment of the 3rd respondent is conceived in fraud and delivered in deceit. In cases of this nature, individual innocence, as claimed by the learned Counsel for the 3rd respondent has no place as it is trite law that "*fraud unravels everything*" and vitiates every solemn act.

32. In the normal circumstances, in an appointment which is secured by fraud, this Court should require them to disgorge the benefits of these ill-gotten gains, but, here, a streak of sympathy has to be shown as the 3rd respondent has worked and earned his salary for the last ten years, now directing recovery of all the salary, would be improper. Hence, we hold our hands for ordering any recovery of salary.

Accordingly, we answer point No.3 and declare that the 3rd respondent-appointee has no right to continue in the post of APP-cum-AGP.

33. For the foregoing reasons, we pass the following:

(i) The writ petition, being devoid of merit, is dismissed.

(ii) The order of the Tribunal dated 24.10.2019 passed in application No.4005 of

2010 directing the payment of cost of Rs.10.00 lakhs by the 1st respondent to the applicant is modified with a direction to the 1st respondent to pay the amount to the applicant, and then, identify the officers at the relevant point of time who were responsible for perpetration of such fraud, hold an enquiry, follow the due process of law, fix responsibility upon them and recover the same from those officers, so identified.

(iii) This exercise shall be completed by the Government within a period of six months from the date of receipt of copy of this order and a compliance report to that effect, shall be filed before this Court.

(iv) Respondent Nos.1 and 2 are directed to consider the candidature of the applicant to the post of APP-cum-AGP within a period of four

weeks from the date of receipt of a copy of this order.

(v) All pending applications do not survive for consideration. They are accordingly disposed off.

(vi) A copy of this order shall be forwarded to the Principal Secretary, Home Department, Bengaluru.

Live Sd/-
Law.in JUDGE
ALL ABOUT LAW

Sd/-
JUDGE

Cs/-