

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 19<sup>TH</sup> DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

**WRIT PETITION No.42748/2014 (L-KSRTC)**

**BETWEEN:**

T.Y. SUBRAMANI

... PETITIONER

(BY SRI R. SOMA SUNDER RAO, ADVOCATE FOR  
SRI LAKSHMAN RAO, ADVOCATE)

**AND:**

THE DIVISIONAL CONTROLLER,  
K.S.R.T.C., BANGALORE CENTRAL  
DIVISION CENTRAL OFFICE,  
K.H.ROAD, SHANTHINAGAR,  
BANGALORE – 560 027.

... RESPONDENT

(BY SMT. H.R. RENUKA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR ENTIRE RECORDS; QUASH THE AWARD DATED 30.10.2013 PASSED BY THE III ADDL. LABOUR COURT IN I.D. NO.49/2010 VIDE ANNEXURE-A; ALLOW THE CLAIM PETITION FILED BY THE PETITIONER IN I.D. NO.49/2010 WITH A DIRECTION TO THE RESPONDENT TO REINSTATE THE PETITIONER WITH FULL BACK WAGES, CONTINUITY OF SERVICE AND ALL OTHER COSNEQUENTIAL BENEFITS ALONG WITH COSTS TO THIS PETITION.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 06/02/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

The petitioner was appointed as a driver in the establishment of the Corporation and at the time of submitting the application for appointment, he had enclosed Transfer Certificate bearing No.131/1987-88, admission Nos.183/1983-84 issued by the Head Master, "Vinayaka Middle High School, Cottonpet, Bangalore". The appointment of the petitioner was confirmed in the year 2002, articles of charges were leveled against the workman for having produced a fake Transfer Certificate at the time of appointment. The Security Officer investigated the genuineness of the Transfer Certificate and issued a letter stating that the Transfer Certificate obtained from the school by the petitioner is not in existence and a letter was addressed to the Education Officer seeking information regarding the existence of the school.

2. The Education officer confirmed that such a school, namely, "Vinayaka Middle High School, Cottonpet, Bangalore" is not in existence at Cottonpet and a letter was

also addressed to the school with regard to the Transfer Certificate. The Enquiry Officer conducted enquiry holding that the charges leveled against the workman are proved and submitted the report, the Disciplinary Authority passed the order of dismissal of the petitioner from service.

3. The workman raised dispute under Section 10 (4-A) of the Industrial Disputes Act, 1947 ('the ID Act' for short), the Labour Court in the first instance, directed reinstatement of the workman with continuity of service with full backwages. Writ petition was preferred by the Corporation in W.P. No.1277/2013, this Court set aside the impugned order and remanded the matter for fresh consideration in accordance with law. On remand, the Labour Court, while answering issue No.1 regarding the fairness of domestic enquiry, on the submission of the workman that he concedes to the fairness of domestic enquiry, answered the domestic enquiry to be held fair and proper.

4. On the question of victimization, the workman examined himself as W.W.1 and got marked documents at Ex.W.1 to W.5. On the other hand, Enquiry Officer was examined on behalf of the management as M.W.1 and got marked documents at Ex.M1 to M20.

5. The Labour Court by the impugned order held that the order of dismissal is not shockingly disproportionate to the proved misconduct as the workman has secured employment on basis of bogus and fake Transfer Certificate and confirmed the order of dismissal passed by the disciplinary authority.

6. Heard Sri R. Soma Sunder Rao, learned counsel on behalf of Sri Lakshman Rao, learned counsel for the petitioner and Smt. H.R. Renuka, learned counsel for the respondent.

7. The Articles of charges issued against the workman was for production of fake Transfer Certificate claiming that he had studied upto 4<sup>th</sup> standard in "Vinayaka

Middle High School, Cottonpet, Bangalore” the Security Officer on investigation, submitted a report that such school does not exist in Cottonpet. Before the disciplinary authority, the Head Master was examined, who categorically stated that the workman has not studied in the school and the transfer certificate at Ex.M.5 is not issued by the school. The main contention of the petitioner is that the disciplinary authority, after keeping the enquiry findings for nearly five years, has removed the petitioner from service and the inordinate delay in completing the enquiry and imposing of harsh punishment of dismissal from service has caused injustice to the workman. It is well settled that with a mere passage of time, a fraudulent act of the misconduct of obtaining a fake certificate would not become sanctity. By giving protection to the workman, the result would be that a person who has a legitimate claim shall be deprived of the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to

be considered for appointment. The Apex Court in the case of ***Bank of India and another Vs. Avinash D. Mandivikar and others***<sup>1</sup> (Avinash) has held at paragraph Nos.12 and 13 as under:

*"12. Looked at from any angle the High Court's judgment holding that Respondent 1 employee was to be reinstated in the same post as originally held is clearly untenable. The order of termination does not suffer from any infirmity and the High Court should not have interfered with it. By giving protection for even a limited period, the result would be that a person who has a legitimate claim shall be deprived the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to be considered for appointment.*

*13. The appeal is allowed but without any order as to costs."*

8. The Co-Ordinate Bench of this Court in the case of ***Shri V. Ramachandrappa Vs. The Divisional Controller***

---

<sup>1</sup> (2005) 7 SCC 690

**and Disciplinary Authority, Management of KSRTC<sup>2</sup>**

(V.Ramachandrappa) has held at paragraph Nos.22, 23 and 24 as under:

*"22. On the other hand learned counsel appearing for the respondent-Corporation invited my attention to the judgments of the Supreme Court to contend that under any circumstances once having proved that employment was obtained on the basis of false and fabricated document no leniency of whatsoever nature can be shown to such employee and only punishment that can be imposed is an order of dismissal.*

*23. In this connection, I would like to refer to the judgments of the Supreme Court to which my attention was invited to, by learned counsel appearing for the parties. The Supreme Court in Union of India vs. V.M.Bhaskaran, 1996 SC 686, while considering almost identical situation in paragraph-6 observed thus:*

*"6.....Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i)*

---

<sup>2</sup> ILR 2013 KAR 4346

*and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent- employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer. In this connection we may usefully refer to a decision of this Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram M. Tripura Sundari Devi, (1990) 3 SCC 655. In that case Sawant, J. speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid*



decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the concerned candidate acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision if by committing fraud any employment is obtained such a fraudulent practice cannot be permitted to be countenanced by a Court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual labourers started departmental proceedings year back in 1987 and these proceedings have

*dragged on for number of years. Earlier removal orders of the respondents were set aside by the Central Administrative Tribunal. Madras Bench and proceedings were remanded and after remand fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject matter of the present proceedings. Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted."*

*(emphasis supplied)*

*23.1 In Bank of India and Avinash D Mandivikar 2005 (7) SCC 690 in paragraph-6 observed thus:*

*"6. Respondent 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe the very foundation of his*

*appointment collapses and his appointment is no appointment in the eye of law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate."*

*(emphasis supplied)*

*23.2 While dealing with similar submission, as made by learned counsel for the petitioner in the present case, that the petitioner has put in nearly two decade of service, the Supreme Court in R.V.Vishwanatha Pillai vs. State of Kerala, 2004 (2) SCC 105, in paragraph-19 observed thus: "19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential*

*right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.*

*(emphasis supplied)*

*23.3 Keeping in view the law laid down by the Supreme Court, I perused the judgment of this Court in V.Krishna (supra) on which heavy reliance was*

*placed on behalf of the petitioner. Insofar this judgment is concerned, learned counsel for the respondent-Corporation at the outset, invited my attention to the order passed by the Supreme Court in a petition Special Leave to Appeal (Civil) Nos.28020/2010 dated 5-7-2012. The Special Leave petition was directed against the very same judgment of the Division Bench in Writ Appeal No.1273/2009 dated 19<sup>th</sup> November 2009. The Supreme Court though dismissed the S.L.P. clarified that said judgment may not be treated as precedent. The order of Supreme Court reads thus:*

*"After having heard learned counsel for the parties and after perusal of the impugned order passed by the Division Bench of the High Court, we find no ground to interfere against the said order. Special leave petition is accordingly dismissed.*

*However, we clarify that it may not be treated as precedent."*

*23.4 In view thereof and in view of the law laid down by the Supreme Court in the judgments referred to herein above, in my opinion, the judgment in V.Krishna is of no avail to the petitioner. Even the order passed by the learned single Judge dated 24-2-2011 also is of no avail to the petitioner. The question*

*raised, considered and dealt with in this judgment was not either raised or considered by the learned single Judge while disposing of writ petition vide order dated 24-2-2011 in Writ Petition No.16564/2008. Insofar as discrimination is concerned, this Court is informed that the Corporation, during last about 9-10 years, has not made any exception in taking action in such cases. In other words, they have not discriminated while taking action of dismissal. In any case, as held by the Supreme Court, no leniency can be shown to a person who has obtained the employment by committing fraud on the Corporation and on the public at large.*

*24. In the present case, I am satisfied that the findings recorded by the enquiry officer on the point of fraud being committed by the petitioner on the Corporation and confirmed by the disciplinary authority and Labour Court deserve no interference. Exercise of discretion by the Labour Court under Section 11-A of the Act, in the facts of the present case, was unavailable and the Labour Court has rightly dismissed the application filed by the petitioner under Section 10 (4-A) of the Act. If any employment is obtained by committing fraud cannot be permitted to be countenanced by the Court of law. By mere passage of time a fraudulent practice would not get any sanctity. The concerned authority, in the present case, was right in taking the impugned action, having*

come to know about the fraud committed by the respondent-workman, in obtaining employment as a driver, after holding a departmental enquiry. As observed by the Supreme court, if any lenient view is taken in favour of the respondent, then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present case cannot be permitted. A person like the respondent- workman does not deserve any sympathy. Equity jurisdiction cannot be exercised in the case of respondent who obtained the employment, on the basis of false and fabricated transfer certificate. In my opinion, equity or compassion cannot be allowed to bend the arms of law in a case where an individual has obtained an employment by practicing fraud."

*(emphasis supplied)*

9. A person who seeks equity must do equity. The petitioner-workman was appointed as a driver in the corporation by submitting a fake Transfer Certificate, the corporation, on coming to know that the workman has played fraud, conducted enquiry and found that the Transfer Certificate obtained was a fake certificate. The allegation, rather than the misconduct as stated by the corporation, is not the misconduct during the course of employment but a

fraud played on the corporation for obtaining employment. As observed in the above decision referred supra, if lenient approach is taken in favour of the respondent, it would be rewarding the dishonest and punishing the genuine person for no fault, more particularly the employer and the eligible candidate who could have gained employment on required qualification. The imposition of punishment of dismissal by the disciplinary authority is for committing the fraud for obtaining employment as a driver and in the said circumstances, the impugned order of the Labour Court confirming the order of the disciplinary authority on facts does not warrant any interference by this Court. Accordingly, this Court pass the following:

**ORDER**

- i. Writ Petition is ***dismissed.***
- ii. Impugned Order of the Labour Court stands ***confirmed.***

**SD/-  
JUDGE**