Chief Justice's Court
Case :- SPECIAL APPEAL NO. -443 of 2002
Petitioner:- Smt. Vibha Shukla And Another
Respondent:- D.E. (Basic) U.P., Alld. And others
Petitioner Counsel:- A.K. Srivastava, K.K. Tripathi
Respondent Counsel:- C.S.C., P.K. Sharma

Hon'ble Syed Rafat Alam, Chief Justice
Hon'ble Ran Vijai Singh,J.

This intra court appeal arises from the judgement and order dated 13.3.2002 passed by the learned Single Judge in Writ Petition No. 7619 of 2001 by which the learned Single Judge has dismissed the writ petition.

It appears that the petitioners-appellants (hereinafter referred to as 'appellants) were appointed as Assistant Teacher in a Junior High School after getting approval from the Basic Shiksha Adhikari of appointment. The appellants continued in service and were paid salary. On 1.1.2001, the Basic Shiksha Adhikari stopped the payment of their salary and in consequence thereof, the Committee of Management, i.e. respondent no. 6 also passed an order to the same effect on 10.1.2001. These orders were subject matter of challenge in the writ petition.

In the counter affidavit, the State-respondents have come with the case that the posts against which the appellants were appointed, were never sanctioned/created by the Basic Shiksha Adhikari vide order dated 20.7.1985 as alleged by the appellants and in fact, Basic Shiksha Adhikari is not the authority competent to create the posts. It is further stated that the Management, in collusion with the appellants had cooked up the matter and appointed the appellants against non-sanctioned posts. It is also stated that in the institution, only five posts were sanctioned

and if these appointments are allowed to continue, there would be five additional posts. Taking that into consideration, the learned Single Judge has dismissed the writ petition.

From perusal of the records, it transpires that the alleged sanction/creation of posts vide order dated 20.7.1985 was never issued from the office of the Basic Shiksha Adhikari and everything is an outcome of calculated exercise of fraud cooked up by the Committee of Management in collusion with the appellants as well as the then Basic Shiksha Adhikari, who had granted approval for appointment of the appellants. It also transpires that on an inquiry, this fact came to notice on 12.12.2000 and thereafter the order impugned in the writ petition was passed.

Before the learned Single Judge, an argument was raised that the order impugned was passed without affording any opportunity of hearing and, therefore, the same is vitiated.

Learned Single Judge, taking note of the fact that the opportunity is not a ritual, which should be offered in each and every case, dismissed the writ petition.

So far as the appointment of the appellants is concerned from the perusal of records, it is apparent that their appointment is an outcome of collusion of the Committee, appellants and the then Basic Shiksha Adhikari as the appellants have nowhere pleaded that the order dated 20.7.1985 through which the posts alleged to have been created, were ever issued by the Competent Authority.

We do not find any error in the view taken by the learned Single Judge with regard to non affording of opportunity of hearing to the appellants by the Competent Authority before passing the impugned order for the reason that even if had opportunity been offered to the appellants, they would not have been able to improve their case as there is nothing on record to indicate that the posts, against which the appellants were appointed, were sanctioned. On the contrary, the letter of creation of posts itself was found to be forged. In that eventuality, even if opportunity would have been offered, it would have been futile exercise. In other words providing of an opportunity at this stage would amount a useless formality.

The Apex Court in the case of **Malloch vs. Aberdeen Corporation (1971) 2 All ER 1278,** has held that the breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute but relief can be refused when the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different even if natural justice is followed. The similar view has been reiterated in the case of **Glynn vs. Keele University, Cinnamond vs. British Airports Authority,** not only in England but here also the Supreme Court in the case of **S.L. Kapoor vs. Jagmohan and others reported in (1980) 4 SCC 379** has held as under:-

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-

> observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgement under appeal."

The same view has been reiterated in **M.C. Mehta vs. Union of India and others (1999) 6 SCC 237** and **Aligarh Muslim University and others vs. Mansoor Ali Khan (2000) 7 SCC 529** and many other decisions of the Apex Court as well as of this Court, which need not to be cited here.

The matter may be examined from another angle on the basis of the pleadings of the parties. The respondents, in the counter affidavit, have stated, as we have noticed, that everything has been cooked up with a view to appoint the appellants in collusion with them. In our view, it is calculated exercise of fraud.

It is settled law that fraud and justice cannot live together. If something has been obtained by playing fraud and the factum of fraud is proved, then that thing becomes non-est.

The Apex Court in the case of **K.D. Sharma vs. Steel Authority of India Limited, (2008) 12 SCC 481** has observed as under:-

"Reference was also made to a recent decision of this Court in A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated : (SCC p. 231, para 22).

> "22. It is thus settled proposition of law that a judgement, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of law. Such a judgement, 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."

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

The Supreme Court in the case of **S.P. Chengal Varaya Naidu vs. Jagannath and others, (1994) 1 SCC 1,** has observed as under:-

"5.…The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient

lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

In **Meghmala and others vs. G. Narasimha Reddy and others (2010) 8 SCC 383,** the Supreme Court in paragraphs 33 and 34 has observed as under:-

"33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. [Vide *Vimla (Dr.) v. Delhi Admn.* AIR 1963 SC 1572*, Indian Bank v. Satyam Fibres (India) (P)* Ltd. (1996) 5 SCC 550, *State of A.P. v. T. Suryachandra Rao* (2005) 6 SCC 149*, K.D. Sharma v. SAIL* (2008) 12 SCC 481 and *Central Bank of India v. Madhulika Guruprasad Dahir* (2008) 13 SCC 170]

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii)

recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996) 3 SCC 310*, Ram Chandra Singh v. Savitri Devi* (2003) 8 SCC 319*, Roshan Deen v. Preeti Lal* (2002) 1 SCC 100*, Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education* (2003) 8 SCC 311 and *Ashok Leyland Ltd. v. State of T.N.* (2004) 3 SCC 1*).*"

In the case in hand, as we have noticed, that the appellants at no point of time, have been successfully able to deny the factum of fraud, which has been alleged in the counter affidavit, by saying that the posts were actually created by the Basic Shiksha Adhikari vide order dated 20.7.1985, which means the appellants' appointment stand nowhere and are void ab initio.

In view of above, we do not find any error in the order passed by the learned Single Judge.

The appeal being without merit, is dismissed.

Order Date:- 29.11.2011(Ran Vijai Singh,J.) (S.R. Alam,C.J.)
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