

DISTRICT PRIMARY SCHOOL COUNCIL, WB

v.

MRITUNJOY DAS & ORS.

(Civil Appeal No. 6007 of 2011)

JULY 27, 2011

[Dr. Mukundakam Sharma and Anil R. Dave, JJ.]

[2011] 9 SCR 546

The following order of the Court was delivered by

O R D E R

1. Leave granted.

2. As the facts and the legal issues arising for our consideration in both these appeals are similar, we propose to dispose of both these appeals by this common judgment and order.

3. The contesting respondents herein got themselves admitted for a training course, for obtaining the Primary Teachers' Training Institute certificate, which is pre-requisite and mandatory in order to get appointment as Assistant Teacher in primary schools in West Bengal. The contesting respondents herein obtained certificates after completing their training course. Thereafter, they also submitted their candidature for such appointment as Assistant Teacher in primary school in which they were selected and were consequently appointed as teachers. However, subsequently, it was found that they had taken admission in the aforesaid training course for Primary Teachers' Training Institute Certificate by inflating their marks. It is pointed out that in the said institute, where they got admission for undergoing training, the minimum marks that one had to obtain for admission in that particular year was 600. Both the contesting respondents inflated their marks. In one case, it was 621 as against 430 marks actually obtained and in the other case, it was 614 as against actual obtained marks of 425. After the aforesaid fact came to light, the appellant

herein issued show cause notice to the contesting respondents and the contesting respondents were also called for a personal hearing. However, none of the contesting respondents availed the opportunity of personal hearing given to them despite the fact they submitted their replies to the show cause notices. The appellant thereafter passed orders dismissing the contesting respondents from service.

4. Being aggrieved by the said order of dismissal, the contesting respondents herein filed writ petitions in the Calcutta High Court which were dismissed. On appeals filed by the contesting respondents before the Division Bench of the High Court, the same were allowed as against which the present appeals have been filed.

5. The issue that arises for our consideration in these appeals is whether the aforesaid order of dismissal issued by the appellant was justified in view of the fact that at the time of appointment as Assistant Teacher in primary school, there was no fraud played by the contesting respondents and that they had got the appointment after qualifying in the test held for appointment as Assistant Teacher in primary schools. It is submitted that they had also completed the training course successfully and got the appointment after duly qualifying in the test and, therefore, the allegation which is prior to the said date could not and should not have been given a weightage so as to disentitle the contesting respondents from continuing with their job. These were the contentions of the learned counsel for the contesting respondents in the writ petition.

6. The contentions of the appellant who were respondents in the writ petition before the learned Single Judge are that once a fraud is played and certificate is obtained fraudulently, such conduct is required to be considered as adverse. It was submitted that obtaining a certificate in a fraudulent manner, makes the certificate itself non-est and void ab initio. It is also submitted by the learned counsel appearing for the appellant that the aforesaid action of

dismissal from service of the contesting respondents was taken in view of their conduct as it was thought that a person of such a conduct should not be allowed to be appointed and continue as a teacher in a primary school as at the stage the students whom the respondents are going to teach are in formative stage.

7. We have considered the submissions of the counsel for the parties. On going through the records placed before us, what we find is that the contesting respondents herein inflated their marks in order to obtain admission in the primary teachers' training institute. Had the marks not been inflated in the aforesaid manner, the contesting respondents would not have got the admission in that particular institute as it is disclosed from the records. Therefore, the admission sought for was through an illegal means which is to be deprecated. The conduct of the contesting respondents being such, we cannot find fault with the course of action taken by the appellant herein. It is not that the contesting respondents were not given any opportunity of hearing. They were given a show cause notice and were also given an opportunity of hearing which opportunity they did not accept although they submitted a reply to the show cause notice. There is, therefore, no violation of the principles of natural justice in the present case. If a particular act is fraudulent, any consequential order to such fraudulent act or conduct is non est and void ab initio and, therefore, we cannot find any fault with the action of the appellant in dismissing the service of the contesting respondents. In this context we refer to the decision of this Court in *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and Others* reported in (2003) 8 SCC 311 for the proposition that no person should be allowed to keep an advantage which he has obtained by fraud.

8. In view of the aforesaid position, we set aside the judgment and order passed by the Division Bench of the Calcutta High Court and restore the order passed by the learned Single Judge of the High Court.

9. The appeals are allowed to the aforesaid extent leaving the parties to bear their own costs.

