

A DISTRICT PRIMARY SCHOOL COUNCIL, WB

v.

MRITUNJOY DAS & ORS.
(Civil Appeal No. 6007 of 2011)

JULY 27, 2011

B

**[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]**

C *Service law – Dismissal from service – Appointment/
selection of respondents as Assistant teacher in Primary
Schools – Respondents as a pre-requisite had taken
admission in the training course for obtaining Primary
Teachers' Training Institute Certificate to get appointment as
Assistant Teacher – However, subsequently, the School
D Council found that the admission in the training course was
obtained by inflating their marks – Respondents dismissed
from service – Writ petitions by the respondents – Dismissed
by the Single Judge of the High Court – However, the Division
E Bench of the High Court allowed the appeal – On appeal,
held: If a particular act is fraudulent, any consequential order
to such fraudulent act or conduct is non est and void ab initio
– No person should be allowed to keep an advantage which
has been obtained by fraud – Respondents inflated their
marks in order to obtain admission in the Primary Teachers'
F Training Institute – Thus, the admission sought for was
through an illegal means which is deprecated – No fault can
be found with the course of action taken by the appellant –
Also respondents were issued show cause notice and were
given an opportunity of hearing – Thus, there was no violation
G of the principles of natural justice – Order passed by the
Division Bench of the High Court is set aside and that of the
Single Judge of the High Court is restored – Doctrines/
Principles – Natural justice.*

Ram Preeti Yadav v. U.P. Board of High School and

H

Intermediate Education and Ors. (2003) 8 SCC 311: 2003 (3) A
Suppl. SCR 352 – referred to.

Case Law Reference

2003 (3) Suppl. SCR 352 Referred to. Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. B
6007 of 2011.

From the Judgment & Order dated 28.04.2010 of the High
Court of Calcutta in MAT No. 254 of 2010.

WITH C

C.A. No. 6008 of 2011.

Deba Prasad Mukherjee, Nandini Sen for the Appellant.

Sahasrangshu Bhattacharjee, Chanchal Kumar Ganguli, D
Abhijit Sengupta, B.P. Yadav for the Respondents.

The following order of the Court was delivered by

O R D E R E

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 F
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 G
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 H

A 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
B 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.
C 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
D appellant thereafter passed orders dismissing the contesting
respondents from service.

4. Being aggrieved by the said order of dismissal, the
contestig respondents herein filed writ petitions in the Calcutta
High Court which were dismissed. On appeals filed by the
E 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
F 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
G 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
H

their job. These were the contentions of the learned counsel for the contesting respondents in the writ petition. A

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. B
C
D

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 E
F
G
H

A 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.

B 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.

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

N.J.

Appeals allowed.