

KRISHNA HARE GAUR

v.

VINOD KUMAR TYAGI & ORS.

(Civil Appeal No. 1755 of 2015)

FEBRUARY 11, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

Res judicata – Principle of – Allegation that respondent no. 1 obtained appointment to the post of headmaster by using forged experience certificates along with application – Challenge to, by the appellant-applicant – Dismissal of writ petition as also writ appeal – Subsequently, on basis of the report by the District Magistrate, cancellation of respondent no. 1's appointment – Writ petition by respondent no. 1 – Dismissal by High Court – However, Special appeal allowed by the Division Bench holding that appellant's claim barred by the principle of res judicata – On appeal, held: When appointment is made dehors the Rules, the same is a nullity – In such an eventuality, the statutory bar like doctrine of res judicata is not attracted – Since respondent no.1 obtained appointment on the basis of bogus certificates the principle of res judicata not attracted – Order passed by the Division Bench set aside – U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 – r. 4(2)(c).

Allowing the appeal, the Court

HELD: 1.1 The Division Bench observed that the appellant did not disclose the dismissal of the earlier writ petition and also the Writ Appeal and thus, the second writ petition challenging the appointment is barred under the principles of *res judicata* to challenge the appointment of respondent No.1. From the materials on record, it emerges that respondent No.1 did not possess requisite

A experience of five years and his appointment is in
contravention to Rule 4(2)(c) read with Rule 2(h) of the
U.P. Recognized Basic Schools (Junior High Schools)
(Recruitment and Conditions of Service of Teachers)
Rules, 1978 and therefore, the appointment of
B respondent No.1 is not valid in law and the earlier Writ
Appeal was dismissed mainly on the ground that the
District Basic Education Officer recorded a finding that
respondent No.1 has the requisite five years teaching
experience. The Additional District Magistrate observed
C that the District Basic Education Officer did not
thoroughly conduct the inquiry, and therefore, dismissal
of the earlier writ appeal cannot be taken as *res judicata*.
[Para 14] [160-D-H; 161-A]

D 1.2 When the appointment is made *de hors* the rules,
the same is a nullity. In such an eventuality, the statutory
bar like doctrine of *res judicata* is not attracted. Since
respondent No.1 obtained appointment on the basis of
bogus certificates the principle of *res judicata* will not be
E attracted to the instant case. Since the appointment of
respondent No.1 is conditional that in the case of any
concealment of facts, the approval is liable to be
cancelled, the Basic Shiksha Adhikari rightly passed the
order cancelling the appointment which was rightly
F upheld by the Single Judge. The Division Bench was
not right in setting aside the order of the Single Judge
on the principles of *res judicata* and thus, the impugned
order of the Division Bench is set aside. [Paras 15, 17]
[161-A, E, G-H; 162-A-B]

G *Meghmala & Ors. Vs. G. Narasimha Reddy & Ors.* 2010
(10) SCR 47: (2010) 8 SCC 383 – referred to.

Case Law Reference

H 2010 (10) SCR 47 Referred to. Para 15

CIVIL APPELLATE JURISDICTION: Civil Appeal No. A
1755 of 2015

From the Judgment and Order dated 15.05.2014 of the
High Court of Judicature at Allahabad in Special Appeal No.
1165 of 2012 B

R. Balasubramanium, Jitin Chaturvedi, Mrinmayee Sahu
for the Appellant.

S. R. Singh, M. R. Shamshad, Rajat Singh, Aditya
Samaddar, Avnish Singh, Ankur Yadav, Asha Gopalan Nair for C
the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. This appeal is preferred against the judgment dated D
15.05.2014 passed by the High Court of Judicature at
Allahabad allowing the Special Appeal No.1165/2012 filed by
respondent No.1 observing that the appellant's claim is barred
by the principle of *res judicata*. E

3. Brief facts which led to the filing of this appeal are as
under:- Vidyapati Junior High School, Jageshwar,
Murshangate, Mahamaya Nagar, District Hathras, U.P., which
is an aided and recognized Junior High School, issued an F
advertisement on 28.07.2010 in the daily newspapers inviting
applications from the eligible candidates for appointment on
the post of Headmaster. Krishna Hare Gaur, the appellant along
with Vinod Kumar Tyagi, respondent No.1 and several other
persons applied for the said post. Respondent No.1 was G
selected and his appointment was approved by the District
Basic Shiksha Adhikari on 09.09.2010 and appointment letter
was issued on 10.09.2010. Based on the information obtained
through RTI, the appellant made a representation dated H
04.10.2010 to all the concerned authorities alleging that

- A respondent No.1 had obtained appointment by using forged experience certificates along with his application. The appellant also submitted another complaint dated 15.10.2010 to the District Magistrate, Mahamaya Nagar. Since no action was taken by any of the authorities, the appellant filed Writ Petition
- B No.70074/2010 raising objections to the said appointment. The learned Single Judge of the High Court, after hearing the parties, vide order dated 02.12.2010 directed the District Basic Shiksha Adhikari to pass a reasoned order within a period of six weeks. The District Basic Shiksha Adhikari, vide order
- C dated 3.02.2011, rejected the representation of the appellant. Aggrieved by the said order, the appellant preferred Writ Appeal No.13537/2011, which was also dismissed, vide order dated 10.03.2011, holding that the District Basic Shiksha Adhikari has recorded a categorical finding that he inspected
- D the original records and found that Respondent No.1 has requisite five years teaching experience.

4. In the meantime, the District Magistrate took cognizance of the appellant's representations dated 04.10.2010 and
- E 15.10.2010 and directed the Additional District Magistrate to conduct an inquiry and submit a report. The Additional District Magistrate submitted his report stating that the experience certificates filed by Respondent No.1 were bogus and obtained with the collusion of the principal of respective
- F institutions. The District Magistrate forwarded the report to the Basic Shiksha Adhikari, vide order dated 09.4.2012, directing him to take appropriate action in the matter and report at the earliest. Pursuant to the finding and the report, the appointment of Respondent No.1 was cancelled by the Basic Shiksha
- G Adhikari on 16.04.2012.

5. Aggrieved by the cancellation of appointment, Respondent No.1 filed Writ Petition No. 20297/2012 before the High Court, impleading the appellant herein as one of the
- H respondents. The learned Single Judge of the High Court, vide

order dated 22.05.2012, dismissed the writ petition on the ground that appointment of respondent No.1 is contrary to the statutory provisions as he did not possess the relevant experience certificates. Aggrieved by the above order, the respondent No.1 herein, preferred a Special Appeal No. 1165/2012 before the High Court which was allowed by the Division Bench by applying the principle of *res judicata*. Being aggrieved by the order of the Division Bench, the appellant (respondent No.8 before the High Court) preferred this appeal by special leave assailing the correctness of the order of the Division Bench.

6. We have heard learned counsel appearing for both the parties.

7. Learned counsel appearing for the appellant contended that respondent No.1 secured appointment to the post of Head Master by committing fraud on the basis of forged documents and such an appointment cannot be upheld. It was further submitted that respondent No.1's appointment letter dated 09.09.2010 is conditional and in case of any concealment of facts, the appointment is liable to be cancelled. It was submitted that the appointment of respondent No.1 is contrary to the statutory provisions contained in Rule 4(2)(c) read with Rule 2(h) of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "the 1978 Rules") which prescribes a minimum of five years of teaching experience.

8. *Per contra*, learned counsel appearing for respondent No.1 contended that once the issue regarding the validity of appointment has been adjudicated in the earlier writ petition being Writ Petition No.13537/2011, the District Magistrate has no authority to question the experience of respondent No.1 and the subsequent writ petition was barred by the principle of *res judicata*. It was further submitted that, by an order dated

- A 03.02.2011 passed by the District Basic Shiksha Adhikari, a concurrent finding was recorded that respondent No.1 possessed requisite five years experience and the Division Bench rightly dismissed the writ petition. It was further submitted that no reasonable opportunity of hearing was given
- B to respondent No.1 by the Additional District Magistrate.

9. In the year 1978, the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 was enacted to regulate the payment of salaries to
- C teachers and other employees of junior high schools receiving aid out of the State Funds and to provide for matters connected therewith. 1978 Rules were framed by the State in exercise of the powers under sub-section (1) of Section 19 of the U.P. Basic Education Act, 1972. The criterion and qualification for
- D appointment of teachers and headmasters in junior high schools is governed by the provisions of the above Rules. This amendment was brought vide Notification dated 12.06.2008, whereby Rule 4(1) was amended and B.Ed. Degree was included to satisfy the criteria of teachers training course. Rule
- E 4(2)(c) was also amended bringing about five years of teaching experience in a recognized school for being appointed as the headmaster as against the earlier Rules which provide for only three years of teaching experience.

- F 10. Admitted facts of the case are that respondent No.1 was appointed on the post of Headmaster in Vidyapati Junior High School, Mahamaya Nagar after approval from Selection Committee and Basic Shiksha Adhikari vide appointment letter dated 10.09.2010. The core issue which arise for our
- G consideration is whether respondent No.1 produced bogus/ forged experience certificates to secure employment to the post of Headmaster.

11. Based on the complaint made by the appellant to the District Magistrate, the District Magistrate directed Additional
- H District Magistrate to conduct an inquiry, pursuant to which the

Additional District Magistrate conducted an inquiry and submitted his inquiry report on 31.03.2012. On a perusal of the order passed by the District Magistrate dated 3.04.2012 and the report of the Additional District Magistrate, it is seen that the Additional District Magistrate has conducted a detailed inquiry and perused all the relevant documents viz., inquiry proceedings conducted by the District Basic Education Officer dated 03.02.2011 and attendance and salary registers of various colleges from whom respondent No.1 obtained experience certificates. Respondent No.1 produced experience certificates from five schools to satisfy the mandatory norm of Rule 4(2)(c) read with Rule 2(h) of the 1978 Rules which prescribes a minimum of five years of teaching experience for appointment on the said post. On perusal of the relevant records, the Additional District Magistrate noticed that in the registers of Mata Premlata Tiwari Inter College, the name of respondent No.1 was shown at the end of the respective months. The Additional District Magistrate noticed that even the ink and handwriting with which the names of other teachers and respondent No.1 were written was found to be different. The salary registers produced did not bear the signatures of the Headmaster and Salary Clerk. Similar disparities were noticed in the records of B.M. Inter College. Upon perusal of those records, attendance register and salary registers of various schools, the Additional District Magistrate submitted his report opining that the first respondent obtained forged certificates for securing appointment. The Additional District Magistrate also observed that the Basic Education Officer did not thoroughly conduct the inquiry and, therefore, the said report of District Basic Education Officer cannot be relied upon.

12. Respondent No.1 has also not produced any document to prove that his appointment in the above-said institutions was made by obtaining prior approval of the authorities mentioned under the Intermediate Education Act or on the

A recommendation of the U.P. Secondary Education Services. Without showing that the necessary procedures were complied with, the appointment of respondent No.1 cannot be said to be a valid appointment.

B 13. Referring to the report of the Additional District
Magistrate in Writ Petition No. 20297 of 2012, the learned
Single Judge observed that the impugned order passed by
the Basic Shiksha Adhikari cancelling the appointment of the
C first respondent is based on records and the report of the
Additional District Magistrate. The learned Single Judge, while
dealing with the said writ petition, also examined the original
records and also verified that the experience certificates
obtained by respondent No.1 were bogus and based on
appointments which were of no legal consequence and his
D appointment cannot be treated to be valid.

14. The Division Bench did not go into the merits of the
matter, but dismissed the writ appeal mainly applying the
principle of *res judicata*. The Division Bench observed that
the appellant has not disclosed the dismissal of the earlier
E writ petition and also the Writ Appeal No. 13537 of 2011 and
thus the second writ petition challenging the appointment is
barred under the principles of *res judicata* to challenge the
appointment of respondent No.1. As discussed earlier, from
the materials on record, it emerges that respondent No.1 did
F not possess requisite experience of five years and his
appointment is in contravention to Rule 4(2)(c) read with Rule
2(h) of the 1978 Rules, and therefore, the appointment of
respondent No.1 is not valid in law and the earlier Writ Appeal
G No. 13537 of 2011 was dismissed mainly on the ground that
the District Basic Education Officer has recorded a finding
that respondent No.1 has the requisite five years teaching
experience. The Additional District Magistrate, as noticed
earlier, observed that the District Basic Education Officer did
H not thoroughly conduct the inquiry, and therefore, dismissal of

the earlier writ appeal cannot be taken as *res judicata*. A

15. When the appointment is made *de hors* the rules, the same is a nullity. In such an eventuality, the statutory bar like doctrine of *res judicata* is not attracted. In the case of ***Meghmala & Ors. Vs. G. Narasimha Reddy & Ors.***¹, this Court held as under:- B

“From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is *non est*.” C
D

Since respondent No.1 obtained appointment on the basis of bogus certificates, in our considered view, the principle of *res judicata* will not be attracted to the case on hand. E

16. Insofar as the plea of respondent No.1 that no opportunity of hearing was afforded to him by the Additional District Magistrate, it is seen from the records that respondent No.1 himself has filed a representation dated 29.09.2011 before the Additional District Magistrate, which was considered by the Additional District Magistrate and we find no merit in the contention of respondent No.1 that there was violation of principles of natural justice. F

17. Since the appointment of respondent No.1 is conditional that in the case of any concealment of facts, the approval is liable to be cancelled, the Basic Shiksha Adhikari rightly passed the order cancelling the appointment which was G

¹ (2010) 8 SCC 383 H

A rightly upheld by the learned Single Judge. The Division Bench was not right in setting aside the order of the learned Single Judge on the principles of *res judicata* and the impugned order of the Division Bench is liable to be set aside.

B 18. In view of the above, the order passed by the Division Bench of High Court in Special Appeal No.1165 of 2012 is set aside and the appeal is allowed. The parties are left to bear their own costs.

Nidhi Jain

Appeal allowed