

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 163/2008

Date of decision: 20th May, 2011

**CORAM: HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Smt. Ruchi Bhandari w/o Shri Nitin, by caste Oswal, aged about 27 years, Ex-employee of Indian Council of Agriculture Research, on the post of Programme Assistant (Computer T-4) and terminated from the service of CAZRI (Central Arid Zone Research Institute), R/o 125- Mahadev Nagar, Paota-C Road, Jodhpur.

..... Applicant

Mr. Manoj Bhandari, Counsel for the applicant.

Versus

1. **The Union of India through the Secretary, Indian Council of Agriculture Research, Krishi Bhawan, Rajendra Prasad Road, New Delhi.**
2. **The Central Arid Zone Research Institute (CAZRI), Jodhpur, through its Director.**
3. **The Sr. Administrative Officer, Central Arid Zone Research Institute (CAZRI), Jodhpur.**
4. **Shri Praveen Kumar Tomar s/o Dr. V.P.S. Tomar, R/o 11/6, Cazri (RRS), Campus, Pali, presently working on the post of Program Assistant Computer (T-4) in the O/o V.K. Pali.**

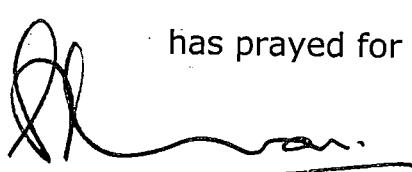
..... Respondents

Mr. Ashok Chhongani, Counsel for respondents 1-3
Mr. S.K. Malik, Counsel for respondent no.4

ORDER

Per Sudhir Kumar, Member (Administrative)

1. The applicant before us is aggrieved by the impugned order dated 2.8.2008, whereby the offer of appointment earlier issued to the applicant for the post of Programme Assistant (Computer T-4) had been withdrawn by the respondent no.3, and has prayed for the following reliefs:-



“i) “By an appropriate order or direction, the order impugned dated 2.8.2008 (Annexure A/1) passed by the Respondent no.3 may kindly be declared illegal and be set aside.

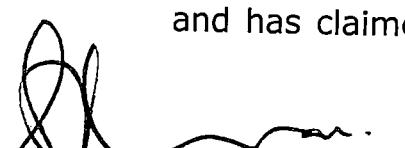
ii) By an appropriate order or direction, the respondents be directed to reinstate the applicant on the post of Programme Assistant (Computer T-4) in the pay scale of Rs. 5500-9000/- with all consequential benefits.

iii) By an appropriate order or direction, the respondents be directed to make the payment of salary to the applicant for the period she had discharged the duties w.e.f. 27.5.2008 till 2.8.2008 with all consequential benefits along with interest @ 24% per annum.

iv) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.”

2. The facts leading to this case are that applications had been invited by the Respondent Institute on 11.11.2006, through Annexure A/2 for appointment on various posts including the post of Programme Assistant (Computer T-4) in the pay scale of Rs. 5500-9000/-. The applicant applied in response to that Advertisement, a typed copy of which application was submitted by the applicant alongwith this O.A. as Annexure A/3 . Through Annexure A/4 dated 19.4.2008 she was called for the written test on 4.5.2008 and interview thereafter the next day on 5.5.2008. Having qualified in both, the offer of appointment dated 17.5.2008 was issued to her through Annexure A/5.

3. The applicant joined her duties on 27.5.2008 (Annexure A/12) and has claimed that she was working effectively and efficiently on



her post, as per the duties assigned to her through the office order dated 10.6.2008 Annexure A/6. Within one month thereafter, the applicant received a show cause Memo (Annexure A/7), the last 3 paragraphs of which stated as follows:-

"Whereas vide letter No. Nil dated 27.5.2008, she has submitted the original certificate pf Secondary School examination, mark-sheet of B.Sc. final examination (indicating subject Botany, Chemistry and Zoology), statement of mark sheet of MCA issued on 7.9.2007 and Degree Certificate of MCA from IGNOU declaring that she has passed the prescribed course in June 2007 examination.

It is now evident that she did not have the essential qualifications i.e. Bachelor degree in Computer Science or higher qualification in Computer Science (MCA) as on the date of closing i.e. 30.11.2006. On the other hand she had made a false declaration stating that she was an MCA from IGNOU as on 21.11.2006.

She is therefore called upon to show cause as to why the Memorandum No. 4(A)-90/2007-Adm. I dated 17.5.2008 offering her a post of Programme Assistant (T-4) (Computer) should not be withdrawn as per the terms of the said memorandum within 10 days from the receipt of this memorandum."

4. The applicant submitted her reply dated 12.7.2008 (Annexure A/8) alongwith the certificate dated 16.9.2004 for her having been awarded the Post Graduate Diploma in Computer Applications (P.G.D.C.A. in short) in the examination held by the Indira Gandhi National Open University (IGNOU for short) in June 2004, and her having been also awarded the Advance Diploma in Computer Applications (A.D.C.A.,in short) by the same University in the examination held in June 2006 through certificate dated 23.9.2006. However, the respondents did not accept her explanation and have passed the impugned order A/1 stating inter-alia as follows:-

"Therefore, after careful consideration of her clarification with respect to the material fact made available by her, it has been found that by the Competent Authority, CAZRI, Jodhpur that she did not possess the essential qualification fro the post of Programme Assistant (T-4) (Computer) as on the date of closing of receipt of application i.e. 30.11.2006 and hence the

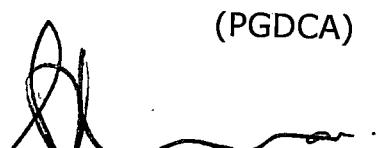


Competent Authority in pursuance of Clause No. (9) and Clause No. (16) of the officer of appointment withdraws the memorandum No. 4(A)-90/2007/Adm.I dated 17.5.2008 with immediate effect."

5. From the pleadings filed by both the parties, it is not clear as to on which date ultimately the applicant was relieved though in para 4.10 of the it has been mentioned by the applicant herself that the impugned Memorandum was delivered to her at her residence while it could have as well been served on her at the place of her working.

6. The applicant has also alleged that the service of the impugned O.M. at her residence was made just to by-pass the organizational hierarchy, so that the fact of termination of her services could not come out in open, and that the entire exercise had been done with extraneous considerations and in order to accommodate another incumbent. It was also mentioned by the applicant that she had not been paid salary for the period she had discharged her duties, w.e.f. the date of her joining on 27.5.2008, till the date the impugned O.M. dated 2.8.2008 was served upon her at her residence the next day.

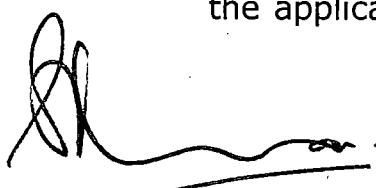
7. The applicant assailed the impugned order Annexure A/1 dated 2.8.2008 as being absolutely illegal, arbitrary, unreasonable, discriminatory and violative of her rights under Articles 14 & 16 of Constitution of India. It was submitted that as on date of her joining her post she was a qualified Degree holder of MCA, and at the time of her date of seeking appointment, she was also possessing the Advanced Diploma in Computer Applications (ADCA) and Post Graduate Diploma in Computer Applications (PGDCA) both of which were higher than the qualification of



Bachelor's Degree in Computer Applications which was the prescribed qualification. It was submitted that even though the applicant possessed even higher qualifications of ADCA, but, in spite of that, her services were terminated on the premise that she was not possessing the requisite qualifications to the post which she had applied for. The applicant assailed the impugned order stating that the conditions of qualifications as mentioned in the notification xx. were itself contrary to the model qualifications as prescribed by the Indian Council of Agriculture Research (I.C.A.R in short), and as such the Respondent Institute has acted in contravention of the guidelines issued by its parent autonomous body ICAR, under xx. which it is working, and in view of this, the impugned order has been passed in a clear cut case of non application of mind on the part of the respondents, and therefore the same cannot be sustained in the eyes of law.

8. The applicant further assailed that the issuance of the show cause notice Annexure A/7 dated 3.7.2008 was merely an empty formality, and the principles of natural justice had not been followed and complied with by the respondents, and because of this also the impugned order was illegal and void ab initio, and deserves to be set aside.

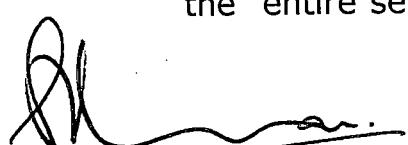
9. It was further submitted that on the legal grounds of xx. termination simpliciter of the applicant without holding a regular inquiry under the CCS (CCA) Rules, 1965, the passing of the termination order was illegal and void ab initio and violative of Articles 14 & 311 of the Constitution of India. It was submitted that the applicant had been selected by a regular selection process, and



had been granted appointment against the regular post of Programme Assistant (Computer T-4).

10. The applicant submitted that even in the advertisement for vacancies (Annexure A/2) it was mentioned that the model qualifications required shall also include equivalent qualifications, she and respondents are guilty of making material alterations and she having issued an advertisement contrary to the model qualifications as prescribed for the post by the ICAR, and in view of this she had pleaded that the impugned order dated 2.8.2008 cannot be justified, and is hence violative of her rights under Articles 14 & 16 of the Constitution of India. She cited the case of a Farm Technician who was granted appointment without even qualifying the written test, and a CBI inquiry was also set up to inquire into the illegalities committed by the respondent Institute in his appointment and yet the concerned person was continuing on that post for last 11 years. It was, therefore, submitted that the respondent Institute cannot be permitted to approbate and reprobate when it comes to the case like that of the applicant, when she was not only a qualified person, but she was also possessing higher qualifications than the one required through the advertisement.

11. The applicant took the further legal ground that the Respondent Institute were barred by the principle of equitable and promissory estoppel. She submitted that when her application in she response to the advertisement had been scrutinized, she had passed the written test, and had submitted all the requisite documents during the interview held on 5.5.2008, and after her having cleared the entire selection process, having been appointed, termination of she.



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her services after 2 1/2 months of her working, on the ground that she was not possessing the essential qualifications, was barred by the principle of promissory and equitable estoppel, and therefore she prayed for the impugned order being quashed on this ground alone.

12. The respondents had filed a caveat, which was taken up with the O.A. for hearing on 11.8.2008, and time had been granted to the respondents to furnish reply to the O.A. The reply was promptly filed by the respondents, and the learned counsel for the applicant thereafter pleaded for time for filing rejoinder, which ultimately came to be filed by him on 7.7.2009. The respondents thereafter filed an additional reply on 4.9.2009.

13. The Private Respondent no.R/4 who has been engaged by the official respondents, after termination of the services of the applicant through impugned order dated 2.8.2008 (Annexure A/1), also filed a reply to the O.A. on 20.10.2009. On 22.10.2009 itself the Bench had directed for issuance of a notice to Sh. K. Ramesh, Deputy Director, IGNOU, New Delhi, who had issued a certificate to the parties, to be present alongwith the relevant file relating to MCA course including the prospectus etc. On 7.12.2009, Sh. Ramesh, Deputy Director, IGNOU, New Delhi, appeared and filed a copy of the basic information of programmes launched by the IGNOU, which was ordered to be taken on record. He had also showed to the Bench the prospectus of IGNOU giving the details about the course taken by the application.

14. The official respondents had in their reply dated 13.8.2008 submitted that only a conditional offer of appointment



had been issued to the applicant, in pursuance of which she joined duties by giving her joining report, and that offer of appointment has been now cancelled and withdrawn and that no final appointment order was ever issued in favour of the applicant. It was further submitted that the applicant has not submitted any representation/appeal against the impugned order, and it had not ~~been~~ been stated by her that all alternative remedies have been exhausted by her before approaching this Tribunal, and hence the O.A. was not legally maintainable in view of specific provisions of Section 20 of the Administrative Tribunals Act, 1985.

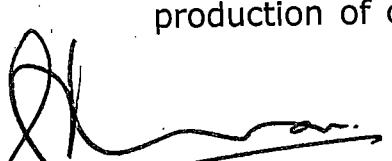
15. It was submitted that in the advertisement for the post applied for by the applicant (Annexure A/2), it was clearly laid down that a candidate required to possess the essential qualification i.e. ~~an~~ BCA/ Bachelor's Degree in Computer Science, from a recognized University, and additional desirable qualifications of work ~~an~~ an. ~~an~~ experience had also ^{been} mentioned. It was also submitted that the advertisement had clearly stated that the application forms submitted by the candidate must contain all the details as required, and must also contain a declaration to the effect that the information disclosed in the application form are true, complete and correct, and that the application of the candidate would be liable to be rejected, in case any of the information submitted by the candidate is either found to be untrue or wrong. It was submitted that the applicant was permitted to sit in the written test only on the basis of her application form (Annexure A/3), in which a reference was made by her to the MCA course taken as under:-

"MCA from IGNOU maintaining 63% from 2003-06."



16. It was submitted by the official respondents that from this declaration it was considered obvious by them that she had given a definition information that she had completed her MCA from IGNOU with 63% marks in the Session 2003-2006. It was further submitted that she had nowhere disclosed that at the time of her submitting the application form, she was still pursuing her MCA course, and yet she had made the declaration that all averments made by her were true, complete, and correct to the best of her knowledge, and that in the event of any information being found false or incorrect at any point of time, her candidature/appointment may be cancelled/terminated without notice to her.

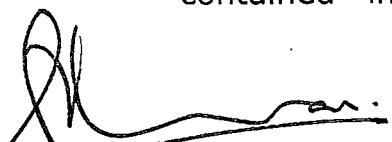
17. It was submitted that when the applicant was called for the interview after her having passed the written test held on 4.5.2008, and the interview was held on the next day on 5.5.2008, the applicant did not produce the original certificates/testimonials regarding her having obtained her MCA Degree after having completed the course before the date of submission of her application form in response to the advertisement. It was submitted that accepting her prayers, the Interview Board had given her another opportunity to produce the same, but that she pleaded for further time to produce, citing her difficulties, and thereafter only she was offered the temporary post of Progarmme Assistant (Computer T-4) on 17.5.2008 through (A/5). It was submitted that this offer of appointment itself shows that her appointment was subject to various terms and conditions, and subject to the by- laws and rules of ICAR, and condition no.9 therein clearly required the production of original certificates in support of additional technical



qualifications and also other relevant certificates. Condition no. 16 further laid down that if any information given in the declaration signed by the applicant is found to be false, or if a candidate has willfully suppressed any material information, his or her candidature would be liable to be terminated.

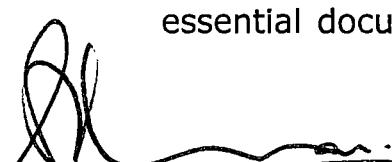
18. It was submitted by the official respondents that on the date of closing of the receipt of the applications dated 30.11.2006, the applicant did not possess the required qualification, proof in respect of which qualification she could not produce before 27.5.2008. It was submitted that the applicant had intentionally not produced the certificate earlier because she knew that she was not possessing the essential qualification on the date of filing of the application form, and that she had suppressed the facts even before the interview Board.

19. It was further submitted that the applicant had never been issued any appointment order in her favour. It was submitted that practice followed in the Respondent Institute is that in the first instance an offer of appointment is issued to the selected candidate, containing the various terms and conditions, and if the terms and conditions are acceptable to the selected candidate, the acceptance has to be communicated within 1 week from the date of receipt of the offer of appointment, and if the terms and conditions are not acceptable, he or she may reject the offer of appointment. It was submitted that in the instant case the applicant was never issued any appointment order because as per the offer of appointment she had to submit the documents for scrutiny as contained in the Memorandum of offer of appointment. But



subsequently, on scrutiny of the documents submitted by ~~hr~~ ^e ~~HM~~ alongwith her joining report, it was found that the information given by her in the application form was false, incorrect, and incomplete, and therefore the offer of appointment was cancelled and withdrawn through Annexure A/1. It was submitted that there are 3 stages in the completion of the recruitment process, i.e. first comes the offer of appointment, then acceptance by an employee, and simultaneously scrutiny of documents and the papers submitted by the newly joined candidate, and if all documents are found to be in order, only then the appointment order is issued. In this respect the official respondents had submitted sample letters of appointment, joining report, and the appointment order of ~~HM~~ appointee, as Annexures R/2, R/3 and R/4. It was submitted that in the case of the applicant, the appointment order similar to R/4 was to be issued, but the same was withheld as there was a doubt regarding her essential qualifications and since the documents submitted by the applicant disclosed that she had intentionally concealed the true information.

20. It was submitted that the official respondents were duty bound to scrutinize the papers and documents submitted by her alongwith her application form and it was in this context only that the applicant had been issued a show cause notice, even though there was no necessity for issuance of such a show cause notice, since she had already declared that in case any information submitted by her is found to be false or incorrect, her candidature would be liable to be cancelled. It was further submitted that the essential documents were submitted by her only on 27.5.2008, at



Pali office, from where they were forwarded to the Jodhpur office, where the scrutiny was made, and on finding that the information disclosed by the applicant was false, a show cause notice was issued to her on 3.7.2008, a perusal of which would show that the applicant was informed of the charges against her that a false information was given by her in the application form that she had a MCA Degree from IGNOU in the Session of 2003-2006, whereas she had passed the MCA course from IGNOU only one year later, on 31.8.2007. It was submitted that it is clear that while applying for the post, the applicant was still pursuing the MCA course, though it had been wrongly projected in the application form as her having secured 63% marks in MCA in the year 2006 itself.

21. It was further submitted that there were other candidates also alongwith the applicant who were pursuing MCA from IGNOU, and like the applicant, had completed the PGDCA and ADCA, but perhaps did not apply because they acted strictly upon the requirements of the vacancy advertisement, which had mentioned BCA as essential qualification. The respondents also cited the case of two other candidates, namely Ms. Sobi Purohit and Sh. Surinder Singh, who had not been called for the interview in spite of the fact that Ms. Sobi Purohit had completed her MCA from IGNOU in the year 2006 with 50% marks, and Sh. Surinder Singh had a diploma in Computer Science and Engineering, and was a student of the final year of Bachelor in Computer Science and Engineering. The official respondents also produced a list at Annexure R/5, which was later emphasized upon during the course of arguments as a list of those other candidates, who had also been declared ineligible, even



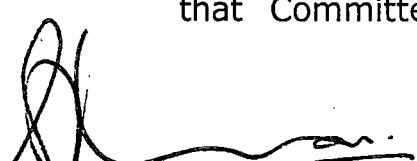
though they were having similar or same qualifications which the applicant was having.

22. The official respondents contested the contention of the applicant that the diploma of ADCA completed by her on 23.9.2006 was a qualification higher than the degree of BCA ,by stating that it was only a diploma course and not a degree course. The respondents had still sought a clarification from IGNOU with regard to the applicant's qualification, as to whether the diploma certificate of ADCA awarded by the IGNOU as part of MCA course is a qualification higher than the Bachelor degree in Computer Science, and as to whether the diploma of PGDCA awarded by IGNOU as part of MCA is equivalent to that of Bachelor Degree in Computer Science, through Annexure R/7, which was clarified by IGNOU through Annexure R/8 stating on 7.8.2008 as follows:-

" It is clarified that admission to MCA Programme of this University is given to the candidates who have completed BCA. Admission is also given to the candidates with qualification of B.Sc. without any formal computer background. However, such candidates need to complete Certificate in Computing (six months course) in addition to the MCA Programme.

It is further clarified that PGDCA is awarded to candidate on successful completion of the courses in first and second semester. This diploma issued to candidates without BCA is not equivalent to Bachelor Degree in Computer Science. Similarly, ADCA is awarded on successful completion of the course in 2nd and 4th semester of MCA. This diploma also cannot be equated with Bachelor Degree in Computer Science in any manner."

23. It was further stated by the official respondents that the reply given by the applicant to the show cause notice was thoroughly examined by a committee constituted for this purpose, by including experts from other institutes, and it was opined by that Committee that as on the date of the closing applications i.e.



on 30.11.2006, the applicant did not possess the required educational qualification for the post she had applied for (Annexure R/10). It was further submitted that the applicant cannot also call upon this Tribunal to decide upon the equivalence of the qualifications which is a highly onerous task, and has to be performed by expert Academicians only.

24. It was therefore submitted that the facts and circumstances clearly indicate that the impugned order was passed by the official respondents after due application of mind, and after providing due opportunity of hearing to the applicant to explain her case, and it is only when her reply was not found to be satisfactory, and it was found that the information given by her in the original application form was false, in terms of the conditions no. 8 & 16 of the offer of appointment, the offer had been withdrawn/cancelled, which cannot be termed as being, arbitrary, unreasonable, discriminatory or violative of fundamental rights of the applicant. The official respondents sought to justify the service of the impugned Memorandum to the applicant at her Jodhpur residential address by stating that this had to be done since the applicant had left her place of working at Pali office without prior permission.

25. In regard to the claim of the applicant for payment of salary, the respondents submitted that the applicant had to give a representation in this regard, which will be processed strictly in accordance with law. It was further prayed that this Tribunal cannot come to the rescue of the person whose conduct and character are questionable, as she had furnished a false information in the application form, and was thus not entitled for any payment



whatsoever since it is a settled law that this Tribunal cannot be called upon to perpetuate any illegality. It was reiterated that the services of the applicant had been terminated not only on the ground of her not possessing the essential qualifications, or equivalent qualifications, but also on the ground of suppressing the material information and intentionally concealing the correct information. It was further submitted that it is not a question of termination of services of applicant, but withdrawal of the offer of appointment itself. It was submitted that the question of terminating her services could have arisen only when the appointment order had been issued, and admittedly no appointment order was given to the applicant, since it had been withheld on account of the doubts having arisen about the documents and information furnished by the applicant. It was further denied that any regular inquiry under the CCS (CCA) Rules, 1965, was required to be held against the applicant. It was submitted that the applicant was not a member of the regular service, and hence any enquiry under CCS (CCA) Rules, 1965, was not warranted, more so in view of the declaration contained in the application form signed by the applicant that no inquiry was required to be held for withdrawing the offer of appointment in view of the false statement made by her.

26. Heard. Apart from the case of the applicant as already reproduced & discussed above, the learned counsel for the applicant emphasized on the contents of para 4.6 to 4.9. of the O.A. among his other arguments. It was submitted that in reply to the show cause notice Annexure A/7 dated 3.7.2008, the applicant had immediately pointed out in her reply dated 12.7.2008 Annexure A/8

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that in the field of Computer Science the certificate of ADCA is a higher qualification than a Bachelor Degree in Computer Science (B.Sc.) (Computer Science), and that the IGNOU acknowledges it, as given in the Students' Hand Book and Prospectus for January 2008 filed by her as Annexure A/10.

27. It was submitted by the learned counsel for the applicant that even the University Grants Commission accepts both the PGDCA & ADCA as valid qualifications in the field of Information Technology. It was therefore argued by him that on the date the applicant was appointed, the applicant possessed qualifications more than the qualifications required for the post applied for by her, and that she had not concealed any information from the official respondents. It was however conceded by the learned counsel for the applicant that in her reply dated 12.7.2008 (Annexure A/8), it was wrongly mentioned that apart from the marks sheet of ADCA earned by her till 21.11.2006, she had also submitted the marks sheet of written examination of MCA final year, which was not happily worded and was factually incorrect. It was pointed out by the learned counsel that the applicant had produced the certificate of qualification of ADCA issued to her on 16.9.2006 at the time of her interview on 5.5.2008, and that there had been no concealment on the part of the applicant which may warrant termination of her appointment. It was further argued that when both the IGNOU and UGC recognized ADCA as a qualification higher than BCA, and PGDCA as a qualification equivalent of the BCA, official respondents cannot be permitted to take a different view without application of mind and ignoring the prescription of



qualifications by the highest academic body of the country, the U.G.C.

28. The learned counsel for the applicant relied upon the following Judgments of the Hon'ble Supreme Court:-

1. **Purshottam Vs. Chairman, M.S.E.B. and Another- (1999) 6 SCC 49.**
2. **Correspondent, ST. Michael's Teacher Training Institute Vs. V.N. Karpaga Mary and Ors.- (2008) 7 SCC 388**
3. **Seema Kumar Sharma (Mrs.) Vs. State of H.P. and Another- (1998) 9 SCC 128**
4. **Wasim Beg Vs. State of U.P. and Ors.- (1998) 3 SCC 321**
5. **Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar- (2008) 2 SCC 479.**
6. **Chandra Prakash Shahi Vs. State of U.P. and Ors. - (2005) 5 SCC 152.**

29. The case of **Purshottam Vs. Chairman, M.S.E.B. and**

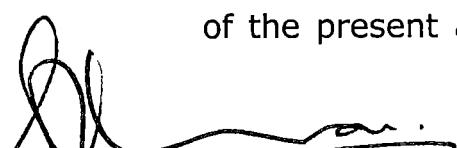
Another (Supra), related to the case when a duly selected candidate could not be given appointment ~~as~~ because someone else had already been appointed in his place, and that therefore there was no vacancy, and the currency of the panel had already expired.

The Hon'ble Supreme Court held that the appellant's rights to be appointed against the post could not have been usurped by someone else, as such usurpation of the post by someone else was not on account of the appellant's fault, but on account of the Board's own erroneous decision, because of which the appellant's right was illegally taken away. The Apex Court therefore directed the respondents to appoint the applicant, though with prospective effect. The learned counsel for the applicant relied upon this case to submit that the applicant herein had also been illegally removed from service and Private Respondent No. R/4 has been appointed in her place, and it was prayed that even the appointment of the



Private Respondent No.R/4 could not be held to deny the right of the present applicant to be appointed to the post for which she was duly selected.

30. In the case of **Correspondent, St. Michael's Teacher's Training Institute** (Supra) a teacher was holding appointment against a particular post. The Government of Tamil Nadu thereafter notified certain higher educational qualifications through a Government order. The teacher who was qualified already to hold the post prior to issuance of the Government Order, was then held not to be possessing the higher educational qualifications newly prescribed, and therefore the appellants before the Hon'ble Apex Court removed her from service. The Hon'ble Apex Court held that when the respondent teacher was possessing the requisite qualifications at the time of her entry in the service, and was appointed on a permanent basis and was a regular teacher, it could not have been held that there was any infirmity in her appointment just because subsequently some higher qualifications came to be prescribed for such appointment. The Hon'ble Apex Court held that the question of termination of her services relying on the basis of the newly issued Government order did not arise, and held the termination of her services to be illegal and unjustified, and even ordered for her reinstatement and grant of 75% of salary applicable for the total period she had remained out of service before she was reinstated in obedience of the orders of the Hon'ble High Court earlier. The learned counsel for the applicant before us sought to submit that this case was applicable to the case of the present applicant, as she held the requisite qualifications as



on the date of her appointment and entry into service, and it was nowhere stated that her employment was on a contingent basis and therefore submitted that her removal was unjustified and she was entitled to be reinstated back in the service with back wages.

31. In the case of Seema Kumar Sharma (Supra) the case related to the criteria for selection of candidates and the delay in submissions of the relevant certificate for claiming the status which would have led to the applicant being awarded 10 extra marks for her eligibility for selection. It was held by the Hon'ble Supreme Court that failure to furnish the certificate earlier does not disentitle the appellant therein to claim her status for award of the 10 grace marks required for her fulfilling the eligibility criteria for selection. The learned counsel for the applicant before us submitted that this case was also applicable to the present applicant, since any delay in the applicant's furnishing the proof of her having passed the MCA degree could not disentitle her from her claim for having passed the MCA Degree on the date of her appointment.

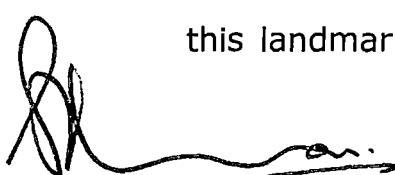
32. In the case of Wasim Beg (Supra) the aspect of confirmation, and completion of probation period as to whether it culminated in automatic confirmation was examined by the Hon'ble Supreme Court and ~~dis~~charge from service of an employee who was deemed to have become confirmed employee on the completion of his probation period was held to be wrongful termination of his service, because proper opportunity and hearing as applicable under the principles of natural justice for termination of services of confirmed employee had not been provided. The learned counsel for the applicant submitted that even though in the instant case of the



present applicant, she had not completed the period of probation, but since no period of probation as such was prescribed, because the post itself was stated to be temporary, principles of natural justice ought to have been implied, and opportunity had to be given to the present applicant before the wrongful termination of her services.

33. In the case of **Nehru Yuva Kendra Sangathan** (Supra) also, the case of termination of services was examined by the Hon'ble Apex Court, and it was held that when the order of termination had been passed on the basis of an inquiry conducted behind the back of the employee, it was unjust as principles of natural justice had not been applied in his case. Learned counsel for the applicant before us submitted that the Committee constituted by the respondents, which arrived at the conclusion that the educational qualifications of the applicant was not fulfilled, had arrived at such conclusion behind the back of the applicant, without allowing her an opportunity to put forward her case, and therefore the termination of her services through the impugned order Annexure A/1 was illegal and unjustified.

34. The learned counsel for the applicant laid great emphasis on the case of **Chandra Prakash Shahi Vs. State of U.P. and Ors.** (Supra) in his oral submissions. In this case the Hon'ble Apex Court has examined the case law relating to termination, and has made a distinction between 'termination simpliciter' and 'punitive termination', and has further elaborated upon the concepts of 'motive' or 'foundation' for termination. In this landmark case, in regard to the termination of services of the



service of the petitioner therein, the Hon'ble Apex Court had held that it has to be seen as to whether the inquiry which was conducted for the purpose of termination of the appellant was to examine the suitability for retention in service/confirmation or for the purpose of finding out the truth in the allegations levelled against him, and had held that in the former case it would be a case of 'termination simpliciter' while in the latter it would be the case of a 'punitive termination' founded on misconduct. However, the Hon'ble Supreme Court had gone on to hold that a petitioner has no right to the post on which he has been placed only on a provisional basis, and in case of his being found unsuitable, his services can be terminated either at any time during the probation, or at the end of probation. It was further held by the Hon'ble Supreme Court that any show cause notice issued to the petitioner should contain the specific complaints and grounds on which it is proposed to discharge him, and it cannot but be held that even a temporary Government employee or a Probationer is also entitled to the protection of Article 311 (2) of the Constitution of India, and that the Court can lift the veil to determine the real character of the termination to find out as to whether it was as innocent as it was worded, or not. The learned counsel for the applicant submitted before us that in the present case also, the applicant herein was already a temporary Govt. servant, and was entitled to protection of Article 311 (2) of the Constitution of India and that she could not have been discharged from service through the process of an inquiry conducted behind her back. He submitted that from the contents of impugned order, purporting to be a withdrawal of the offer of



appointment issued to the applicant herein, *it* was a case of 'punitive *h.* termination' and not merely a case of 'terminating simpliciter', as explained by the Hon'ble Apex Court in this land mark case.

35. We have given our anxious consideration to the facts of this case.

In the case of **Union of India Vs. M.K. Sarkar** (2010) 2 SCC 1959 the applicability of the concept of formation of contract between an employer and an employee under Section 8 of the Contract Act, 1872, came to be commented upon by the Hon'ble Supreme Court. It was held that when an offer was made by the employer to the employee to exercise an option, and the employee chooses not to exercise the option, even in the absence of an exercise of written option, the contract not to exercise the option was deemed to be completed, and it was held that this issue cannot be *reopened* thereafter. Therefore, an employee is bound before his employer with the contents of both what he states in writing, as well as what he does not so state when being given an option to so state.

36. As has been discussed by the Hon'ble Apex Court in the case of **Chandra Prakash Shahi Vs. State of U.P. and Ors.** (Supra) and in the case of **Champaklal Chimanlal Shah Vs. UOI** : AIR 1964 SC 1854: (1964) 5 SCR 190, when the services of an employee who was temporarily employed were terminated by giving him a simple notice specifying therein that the services would be terminated w.e.f. the date mentioned therein, but, before the termination of his services, he was called up to explain certain irregularities and was also asked to submit his explanation, but no

regular departmental inquiry was held. In that case the Hon'ble Supreme Court held that since no punitive action was taken against the appellant, there was no question of applicability of Article 311(2) of the Constitution of India.

37. In another case, in case of **State of Punjab Vs. Sukh**

Raj Bhadur: AIR 1968 SC 1089: (1968) 3 SCR 234, in the case of an employee who was ordered to be reverted back to his substantive post after issuing him charge sheet to which a reply was submitted by the respondent, but the disciplinary inquiry was not proceeded with, and an order of reversion was passed, it was held that the order could not be treated to have been passed by way of punishment and the Hon'ble Supreme Court laid down the following prepositions:-

"1. The services of a temporary servant or probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service in unexceptionable form preceded by an inquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311, i.e., an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

38. These principles, as well as the principles laid down in **Champaklal case** (Supra) were reiterated by the Hon'ble Apex Court in a number of cases through which it was laid down that in



order to attract the provisions of Articles 311(2), it has to be seen whether the misconduct or negligence was a mere "motive" for the order of reversion or termination, or whether it was the very "foundation" of that order, and it was held that the Court has to examine the entirety of the circumstances preceding or attendant on the the.

the order of ~~the~~ termination, and if the order ~~visits~~ visits the employee with the penal consequences, the order would be punitive.

39. The same concept of 'motive' and 'foundation' theory was reiterated by the Hon'ble Apex Court in the 7 Judges Bench decision in Samsher Singh Vs. State of Punjab: (1974) 2 SCC 831: 1974 SCC (L&S) 550: (1975) 1 SCR 814: AIR 1974 SC 292, and it was laid the down that the question as to whether an order terminating the services of temporary employee or a probationer was by way of punishment or not would depend on the facts and circumstances of each case. It was further held by the Hon'ble Apex Court that the form of the order was not conclusive, and even an innocuously worded order, terminating the services of a temporary employee or a probationer may, in the facts of the case, be found to have been passed on account of serious and grave misconduct, and in utter violation of the Article 311 (2) of the Constitution of India.

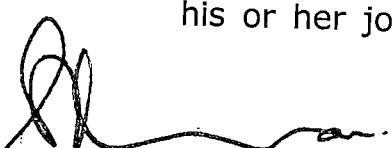
the 40. But ~~the~~ this entire case law in this regard was reviewed by the Hon'ble Apex Court in the **State of U.P. Vs. Ram Chandra Trivedi**: (1976) 4 SCC 52: 1976 SCC (L&S) 542: AIR 1976 SC 2547: (1977) 1 SCR 462, and it was laid down that the 'motive' operating in the minds of the Govt. in passing the order for termination or reversion was not a relevant factor for determining whether the order was passed by way of punishment. It was held



that what was determinative of the true nature of the order was not its exterior form, but the 'foundation' on which it was based. If misconduct or negligence was the foundation of the order of termination, it was held that the order would be punitive in nature.

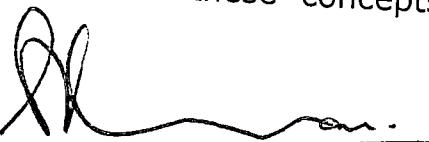
41. In the above cited Judgment the Hon'ble Supreme Court has further observed that if on an over all assessment of the work and conduct of the employees, the authority competent to terminate the services of the employee is satisfied that on account of the employee's general unsuitability and inefficiency or misconduct, it would not be in the public interest to retain him in service, it may either terminate the services by an innocuous order, or may proceed to take punitive action by holding a regular departmental inquiry. The Hon'ble Apex Court however emphasized that the termination has to be in accordance with the terms and conditions of service regulated by the relevant rules.

42. In the instant case, the official respondents have on the other hand emphasized that in the offer of appointment issued to the applicant itself, a condition had been prescribed that the offer could have been withdrawn in terms of condition No. 9 & 16 of the offer of appointment. They also laid great emphasis on their submission that final appointment of an employee can only be deemed to be given effect to from the date of issuance of the confirmation order of appointment, i.e. the third stage in the process of recruitment, after an employee has accepted the offer of appointment issued to him/her and has submitted the requisite documents at the time of his or her joining, and the documents have been examined and



found to be in order before issuance of the final order of appointment.

43. It is clear that the offer of appointment is issued to a person selected through the regular process of selection, and as soon as such selected person accepts that offer, even though it is conditional, and joins the duties, he or she has to be held to have acquired the status of a temporary government servant from that date of his or her joining the duties. The Advertisement of a post is an invitation to offer. The candidates thereafter offer their services to the employer. After sifting through the offers received, and following the due process of selection, the employer issues what is an acceptance of the offer made by the candidate, even though it is wrongly called an offer of appointment. If the offer made by the candidate was a valid offer, not suffering from any illegalities, its acceptance binds the employer and the employee in a contractual relationship. But, if there was an element of fraud in the offer made by the candidate, the acceptance of such a fraudulent offer does not result in a binding contract, and the contract is void ab initio, or at least a voidable contract. The legal requirement of Section 8 of the Contract Act, 1872, for a contract being completed can be fulfilled only when an offer which is valid and free from fraud or illegalities is accepted and acceptance of the valid offer is communicated to the offeror by the offeree, and that offer becomes final as against the offeree when the offeror receives the communication of acceptance of the offer from the offeree, provided the ingredients of a valid offer made by the candidate have been fulfilled. Applicability of these concepts of Contract Act, 1872, to service law also was

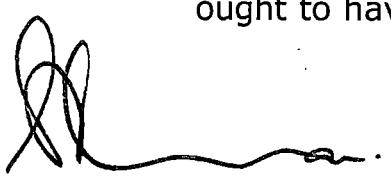


obliquely referred to by the Hon'ble Apex Court in the context of exercise of option in the case of M.K. Sarkar (Supra).

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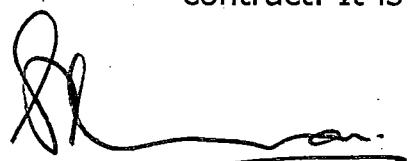
44. Therefore, we have no doubt in our mind that the applicant herein could have acquired the status of a temporary employee of the respondent Institute when she joined her duties on 27.5.2008 at Pali in response to the "offer of appointment" made to her, only if there was nothing wrong or illegal in the offer made by her initially at the time of her application. The contention of the respondents that she would have acquired the status of a temporary employee only if the 3rd stage order of appointment had been issued from the Head Office of the Institute at Jodhpur after verification of the documents submitted by her at the time of her joining at Pali merits approval only in the context that a valid contract can be held to have been concluded only if there was nothing wrong with the offer made by her of her services to the employer, which is not so in this case.

45. Vociferous arguments were submitted before us regarding the incorrectness of the declaration submitted by the applicant for the job applied for, and the learned counsel for the respondents emphasized that she did not possess the required qualifications as on the date of her application, even though he accepted that she fulfilled the required qualifications for the job as on the date of issuance of the offer of appointment to her and on the date of her joining service at Pali on 27.5.2008. The learned counsel for the respondents laid great emphasis that the contents of the vacancy notification has to be read to imply a meaning that the applicant ought to have possessed the requisite qualification as on the date of



her application, or as on the date of closing of the receipt of applications on 30.11.2006, which she did not possess. In fact it is seen that she did not complete her course of MCA in the session 2003-2006 at all, but completed it one year later in the year 2007.

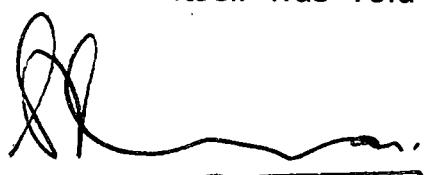
46. Since she had not completed her MCA as on the date of the application, her statement about "maintaining" 63% in MCA in the 2003-2006 session of IGNOU was an obvious misrepresentation, if not a fraud also. Therefore, there is merit in the submission of the learned counsel for the respondents that in the absence of the applicant possessing the requisite qualification as on the date of her application, or on the last date of receipt of applications on 30.11.2006, it was not required of respondents to consider her qualifications acquired subsequently, as on the date of her taking the written test on 4.5.2008, and on the date of the interview on 5.5.2008. She had wrongly claimed in her application to be possessing the requisite qualification, and was therefore not qualified to hold the post, for which an offer of appointment was issued to her by considering her incorrect submission as true, and on which basis she joined at Pali on 27.5.2008. Therefore the contention of the respondents in this regard is accepted and it is held that an irregular or illegal application could not have been accepted and the offer of appointment could not have been issued to her, allowing her to join her duties at Pali on 27.5.2008, and even though on that date she came to acquire the status of a temporary government servant as already discussed above, such temporary status was obtained by her on the basis of a void or voidable contract. It is trite law that a contract entered into on the basis of



a fraud or a misrepresentation is not a valid contract in the eyes of the law, and can be void or voidable, depending upon the nature of circumstances.

47. It is also clear that the applicant did not become a permanent government employee, and her case was still being examined by the official respondents, and when they observed an element of misstatement in her application, they appointed a committee to examine the equivalence of degree and qualifications, and came to the conclusion that as on the date of her application, the applicant did not possess the requisite qualification, as she had tried to project through her improperly worded statement. There is substance in the statement of the respondents that the applicant had been far from being truthful in her initial application in the year 2006 and that they discovered it only once when she submitted all the documents relating to her qualifications, after reporting for her duties on 27.5.2008.

48. In the case of a void or voidable contact, the respondents need not have resorted to either a "termination simpliciter" or a "punitive termination". The respondents have on the other hand issued Annexure A/1, which is in the nature of recalling of the offer of appointment issued to her initially. It is a moot legal question as to whether, in the case of a void or a voidable contract under the Contract Act, 1872 such a withdrawal of the offer of appointment issued to her after it had been accepted by her renders the impugned order liable to be interfered with. But since the contract itself was void or voidable, it appears that the acceptance of the



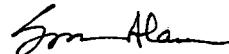
applicant's offer of her services could have been withdrawn by the respondents.

49. It is seen from the above case law that the services of a temporary Govt. servant could have been terminated by an order of "termination simpliciter" if on an over all assessment of her conduct it was not found conducive for Govt. service. Here the misconduct of a falsehood having been stated by the applicant in her application for employment has been correctly ascribed to the applicant, and that falsehood was both the "motive" as well as the "foundation" for the impugned order having been passed. Since the alleged misconduct of the applicant having made a false declaration at the time of applying for the post was both the "motive" as well as the "foundation" for the respondents having passed the impugned order, it cannot be held to be punitive in nature.

50. In the result, it is held that the respondents could have withdrawn the offer of appointment even after its acceptance. In the result the applicant cannot be deemed to have continued in service in spite of her misrepresentation in her offer, which misled the respondents to accept her offer, though it was later discovered that the offer itself was fraudulent, and could have resulted only in a void or voidable contract of employment with the respondent Institute.

51. Therefore, the O.A. is dismissed, but there shall be no order as to costs.


(SUDHIR KUMAR)
MEMBER(A)


[JUSTICE S.M.M. ALAM]
MEMBER (J)