

**Naresh Kumar Sinha**

**v.**

**State of Bihar & Ors.**

(Civil Appeal No. 4661 of 2025)

02 April 2025

**[J.K. Maheshwari\* and Aravind Kumar, JJ.]**

### Issue for Consideration

Whether the High Court erred in declining to interfere in the order terminating the service of the appellant.

### Headnotes<sup>†</sup>

**Service Law – Termination from service – When not justified – Appellant-Clerk was terminated from service alleging that the appointment order was issued by an incompetent authority Deputy Director, Human Resources Development Department (DDHRD) and was illegal; and that the appellant had forged the appointment order – Termination upheld by High Court – Interference with:**

**Held:** Order of termination is untenable on fact and record – The reasoning that the appointment order was issued by DDHRD is incorrect as the appointment order was issued by Government of Bihar, Human Resource Development Department, and signed by Additional Director and not by DDHRD – Further, mere bald statement that the appointment was based on forged document or on fraud is not sufficient – Appellant worked for more than 16 years regularly, was regularly paid salary by the department, and has thus, acquired the status of permanent employee – Mere correspondence of an officer alleging non-issuance of appointment memo is not enough to prove such fraud, particularly when such appointment was made in furtherance to an advertisement, and while terminating the services, it is said that order of appointment was issued by incompetent authority – Allegation of fraud has not been pleaded and substantiated – In case the record was not traceable, it would not *ipso facto* make the appointment forged or fabricated – If the department was of the opinion that the order of appointment is not available on record, an enquiry should have been conducted for looking into the alleged forgery in issuance of

\* Author

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the appointment order – In absence of any such enquiry, allegations of fraud and fabrication leading to termination are unjustified – Orders passed by the High Court set aside – Termination order quashed – Appellant to be reinstated with 50% back wages and all the consequential benefits – Fraud. [Paras 12, 15, 22, 24]

#### **Service Law – Termination from service, on ground of fraud – Non-production of the record by Department – Adverse inference to be drawn:**

**Held:** When the allegation of forgery or fraud has been made by the State Government, it must have some foundation – In cases where mere allegation of fraud has been made without any foundation and then the records have been called by the Court to assess such allegations, it is the duty of the Head of the Department to produce the same for perusal – In the present case, if the said record was not traceable, then it was the duty of the Department to identify who was responsible for misplacing such record, and an enquiry in this regard ought to have been conducted against the defaulting person and report in that regard should have been placed – In absence thereof, mere plea of non-traceability of the record is insufficient – Thus, despite granting multiple opportunities, which resulted in non-production of the record, in the facts, adverse inference drawn against the respondents. [Para 22]

**Words and Phrases – Fraud – Meaning and impact – Discussed.**  
[Paras 17-20]

#### **Case Law Cited**

*Ram Chandra Singh v. Savitri Devi and Others* [2003] Supp. 4 SCR 543 : (2003) 8 SCC 319 – referred to.

*Lazarus Estates Ltd. v. Beasley* (1956) 1 QB 702; *Derry v. Peek* (1889) 14 AC 337 – referred to.

#### **Books and Periodicals Cited**

Advance Law Lexicon, 3rd Edition 2005 by P. Ramanatha Aiyar.

#### **List of Keywords**

Termination of service; Order of termination; Forgery; Fraud; Services terminated without following the due process of law; Forged appointment; Forged document; Genuineness of the appointment

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order; Appointment order issued by incompetent authority; Non-traceability of the record; Allegation of fraud; Allegation of fraud not pleaded and substantiated; Absence of enquiry; Issuance of show cause notice; Reinstatement; Reinstated in service with back wages; Termination order quashed; Clerk; Government of Bihar, Human Resource Development Department; Deputy Director, Human Resources Development Department (DDHRD); Additional Director.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4661 of 2025

From the Judgment and Order dated 17.05.2019 of the High Court of Judicature at Patna in LPA No. 379 of 2018

### Appearances for Parties

*Advs. for the Appellant:*

Anurag Singh, Anil Kumar Mishra.

*Adv. for the Respondents:*

Manish Kumar.

### Judgment / Order of the Supreme Court

#### Judgment

**J.K. Maheshwari, J.**

- 1) Leave granted.
- 2) The appellant assails the order dated 17.05.2019 passed by the Division Bench of the High Court of Judicature at Patna dismissing the Letters Patent Appeal No.379 of 2018. In the LPA, the order passed in C.W.J.C. No. 15852 of 2006 dated 20.02.2018 was challenged wherein the order of termination dated 21.11.2005, was in question. As such, by the orders impugned, interference in the order of termination of service of appellant had been declined.
- 3) The facts shorn of details are that in furtherance to an advertisement dated 22.06.1981, appellant was appointed as clerk *vide* order dated 24.06.1989, and posted at S.M.T. High School, Vaishali, Bihar. He submitted his joining on 04.07.1989 which was initially resisted by

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headmaster but later he was allowed to join and he performed his duty. Thereafter, on transfer to other schools, he worked for more than one and a half decade. On 19.09.2005, the District Education Officer, Patna issued a show cause notice, alleging that his appointment was forged and *vide* order dated 21.11.2005, his services were terminated without following the due process of law. Appeal filed against such termination was also rejected *vide* order dated 13.10.2006.

- 4) Being dissatisfied, Writ Petition was filed which was dismissed. During pendency of the writ petition, learned Single Judge *vide* order dated 27.07.2011 sought report with respect to the genuineness of the appointment order. The same was filed along with an affidavit, *inter alia*, stating that the original file of appointment could not be traced, but the file relating to transfer of newly appointed clerks in 10+2 secondary schools has been traced out. It was said that the order of appointment was issued in violation of the terms of Circular No.16440 dated 02.12.1980 of the Personnel and Administrative Reforms Department. Learned Single Judge while dismissing the writ petition and relying on those averments held that the order of appointment could have been issued at the level of the Directorate and not at the level of Deputy Director, Human Resources Development Department (in short “DDHRD”). As such, appointment of the appellant was issued by an incompetent authority and was illegal. Further, with reference to dispatch number of the order, it was observed that the register was relating to transfer of clerks which also does not tally. Thus, the contention of appellant with respect to issuance of appointment by the same dispatch was not accepted, because it will not make the appointment of the appellant genuine. As such, learned Single Judge refused to interfere and dismissed the writ petition.
- 5) Aggrieved by such dismissal, the appellant filed the impugned LPA before the Division Bench, which was also dismissed relying on the same report and affidavit, wherein the Division Bench held that the appointment of appellant was not issued at the appropriate level by the Department, hence, found to be forged. Accordingly, the Division Bench maintained the order of learned Single Judge.
- 6) In the counter affidavit filed by the State, it is *inter-alia* stated that the DDHRD was incompetent to appoint Class III employees in the schools. Thus, when the order of appointment was not issued by the competent authority, appellant had illegally occupied the post and he cannot claim equity after committing such fraud. Further, in the case

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of fraud or forgery, plea of violation of the principle of natural justice is not tenable. It is said that the appellant and one Sanjay Kumar Sinha were said to be appointed by the then DDHRD issuing different orders of appointment dated 24.06.1989; however, while verifying, the Section Officer has denied issuance of such orders. On the said pretext, while examining the orders of transfers of 36 clerks, it was found that 12 were appointed before 02.10.1980, 2 were appointed on recommendation of Bihar Public Service Commission and 11 were appointed on compassionate ground. Remaining 11 including appellant and one more were also found to be transferred. In the said context, dispatch register was examined, but the same was not tallied. As per the directions of the High Court, when enquiry was conducted, the original file of the appointment was not made available and only a part of file relating to transfer was produced before the Principal Secretary. Based on this, it was said that the order of appointment, if any, dispatched along with transfer orders, cannot be recognized as valid. Hence, any interference in the order of termination is not warranted.

- 7) In the impugned judgment, the order of learned Single Judge was maintained, refusing to interfere with the order of termination of appellant, by merely relying upon the report submitted by the Principal Secretary, Human Resources Development Department. As per the said report, it was specified that the appointment ought to be issued at the directorate level and not at the deputy director/DDHRD level. It is also said that the dispatch number tallies with the register to dispatch the transfer order, and not with the register to dispatch the appointment order, therefore, the appointment appears to be forged. With these allegations, it is said the appointment of appellant was forged and fabricated, therefore, principle of natural justice would not attract.
- 8) From the proceedings of this case, it appears that after filing of counter affidavit and rejoinder, with an intent to lift the veil on the allegations, *vide* order dated 22.01.2024, a direction to produce the original records pertaining to the appointment and working of the appellant was issued. Even after granting repeated opportunities, respondents have not produced the record. Later, *vide* order dated 12.02.2025, while granting further time, this Court observed as under:

“In the facts of the case, we deem it appropriate that the record be traced and produced. In the interest of justice, we grant six weeks’ further time to produce the record

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failing which drawing adverse inference, appropriate orders will be passed.”

In reference to the above order, during hearing, learned counsel of the State submitted that the record is not traceable, as such the Court may proceed in the matter.

- 9) After having heard learned counsel for the parties and on perusal of the counter affidavit, it is luculent that the respondents have not disputed the issuance of the advertisement, in furtherance to which the appellant was appointed. In absence of any specific denial, it may be concluded that appointment of appellant was after following the due process of law. On submitting joining, he was allowed to perform his duties, later, transferred to Devipad Choudhary Shaheed Asmarak (Millar) School and other schools where he served for more than a decade. Surprisingly, after serving for more than 16 years, a show cause notice dated 19.09.2005 was issued questioning the genuineness of his appointment order. On him filing a reply, without holding any enquiry into the allegations of fraud and sans the procedure as prescribed, the service of the appellant was terminated which led to the present litigation.
- 10) After bestowing our consideration to the facts, it is clear that the appointment of appellant was in furtherance to the advertisement published in Aryabrata newspaper dated 22.06.1981 and the order was issued on 24.06.1989 by the Government of Bihar, Human Resource Development Department with signature of Additional Director and its communication was made by the DDHRD. The appellant was permitted to join, and later he was transferred at different places. At the time of issuing show cause notice, he was posted as clerk at Parvati Higher Secondary School, Bikram, Patna and while passing the order of termination, he was posted as clerk at Urehan Girls Higher Secondary School, Bihta, Patna. The show cause notice and the order of termination were initiated from the office of the District Education Officer, Patna and by that time he had served the department for more than 16 years.
- 11) Further, it is noted that the show cause notice was issued in reference to L.P.A. No. 527/05 and letter No. 769 dated 23.07.2005 of Director, Secondary Education, Bihar, Patna. The context of the above referred LPA and the letter has not been placed for perusal. In this show cause notice, an explanation was sought from appellant based on information furnished by the DDHRD regarding non-issuance of the appointment

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from the directorate, that why he should not be terminated from the service. On furnishing the explanation on 27.09.2005, the order of termination was passed inter-alia stating that the appointment of the appellant was issued by the DDHRD and the appointment has not been issued from the secretariat. In addition to referring the office letter, it was said the directorate has not issued the appointment order, so it is forged by the appellant. In the order of termination, the directions of the department's letter No. 17127 dated 12.06.1981 has also been referred whereby it is admitted that appointment of Class-III posts can be made at the district level following the directions contained in letter No. 3/R-1-103/73-7605 and 16440 dated 02.12.1980 of the Department of Personnel and Administrative Reforms.

- 12) On analyzing all those documents, the reasons of termination as mentioned in the order, and the averments made in counter affidavit, it is clear that appointment order was issued by Government of Bihar, Human Resource Development Department, and signed by Additional Director and not by DDHRD. Thus, on the face of it, first reason assigned in the order of termination that the appointment was issued by DDHRD is incorrect. Moreover, in reference to the letter No. 994 dated 08.09.2005 of DDHRD, it is said that the appointment has not been issued at the secretariat level which is not the defence taken in the counter affidavit. Further, references made to directions contained in the departmental letters dated 12.06.1981 and 02.12.1980 are also not germane to the issue, which merely prescribe that the appointment of Class-III post can be made at district level, following the procedure as specified therein. In the counter affidavit filed, it has not been stated that the appointment of the appellant was not made after following due process of law. From the above discussions, the reasons assigned in the order of termination are factually incorrect and based on extraneous consideration which cannot be accepted.
- 13) In this regard, stand taken in the counter affidavit that appointment was issued by the DDHRD and not from the directorate is not correct. The perusal of appointment letter clearly indicates that it was issued by the Government of Bihar, Human Resource Development Department and signed by the Additional Director, meaning thereby that the appointment has been issued either at directorate level or at Government level and not at the level of DDHRD. Therefore, findings of the High Court on this issue are contrary to the record per se illegal.

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- 14) In addition to the above, it is to observe that order of appointment issued from the office of the Government of Bihar/directorate cannot be nullified by an order of the District Education Officer, merely by issuing a show cause notice and without following any procedure.
- 15) Since the plea of fraud taken by the respondents has been accepted by the High Court in the order impugned, the foundation of the said plea requires consideration. The show cause notice memo dated 19.09.2005 is in reference to L.P.A. No. 527/05 and letter No. 769 dated 23.07.2005. As per the contents of the said memo, District Education Officer vide letter No. 1126 dated 31.08.2005 sought some information from the DDHRD which was furnished vide letter no. 994 dated 08.09.2005 indicating that the appointment memo No. 365 dated 24.06.1989 (wrongly mentioned as dated 29.06.1989) was not issued from the directorate. The stand taken before the High Court and in the report sought is that the said record is not traceable. This is not the stand of the government that selection and appointment has not taken place, further no record of such selection is available. In such case where the record is not traceable, it would not *ipso facto* make the appointment forged or fabricated. As discussed in para 13, the appointment order dated 24.06.1989 was issued at Government/ Directorate level, therefore, correspondence of the DDHRD for non-issuance of the memo of appointment without denying the process of selection and existence of appointment order, is of no help.
- 16) The termination order was challenged in writ petition before the High Court in 2006, which was decided in 2018. During the pendency of the writ petition, directions were issued on 27.07.2011 to place the record regarding appointment. In furtherance of which, only a report was submitted. The said report merely refers to the correspondence of the DDHRD as referred in the show cause memo. On filing LPA, the report produced pursuant to the order dated 27.07.2011 has been referred. It is a matter of prudence that when the allegation of forgery or fraud has been made by the State Government, it must have some foundation. Mere correspondence of an officer alleging non-issuance of appointment memo is not enough to prove such fraud, in particular when such appointment was made in furtherance to an advertisement, and while terminating the services, it is said that order of appointment was issued by incompetent authority, i.e., the DDHRD.

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- 17) Since the termination is based on allegation of fraud which is accepted by the High Court, it is necessary to refer when such allegation of fraud can be substantiated. In this regard, we have to see what is fraud. As per the **Advance Law Lexicon, 3<sup>rd</sup> Edition 2005 by P. Ramanatha Aiyar**, “**fraud**” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent.
- 18) In the facts of the present case as discussed above, no pleading or foundation which includes any of the ingredients of fraud has been put forth or substantiated. In the case of **Lazarus Estates Ltd. Vs. Beasley: (1956) 1 QB 702**, the impact of fraud and its importance has been discussed. Denning, L.J. has stated as under:
- “...No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever...”*
- 19) This Court has considered the said observations in the case of **Ram Chandra Singh Vs. Savitri Devi and Others: (2003) 8 SCC 319**, wherein the court discussed what would constitute fraud:
- “...Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.”*
- 20) In the case of **Derry v Peek: (1889) 14 AC 337**, as well, the House of Lords observed that in case of fraud, actual fraud on part of person must be proved. It will be said to be proved when it is shown that any false representation has been made knowingly, or without belief in its truth, or recklessly, without caring about its truthfulness or falsity. In this regard, any false statement made carelessly and without

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reasonable ground for believing it to be true may be evidence of fraud. However, it does not mean that it would necessarily amount to fraud. Any statement made with honest belief in its truthfulness is not fraudulent and would not render the person liable for a fraudulent act.

- 21) As discussed in paras 11, 12, 13, 14 and 15 above, any pleading laying any foundation of alleged fraud specifying any of the ingredients of fraud has not been established. It is trite to say that without any allegation of fraud, merely using word fraud is not sufficient. In addition, this Court has taken care to understand whether the allegation of “fraud” is discernible from the record or not. For effective adjudication, the original records pertaining to appointment and working of appellant were called on 22.01.2024 within a period of three weeks. The government sought more time to produce the said record on 16.02.2024 but they were not produced. However, on 12.02.2025 while granting last opportunity to produce the record, it was observed that failure to produce the records may result in drawing of adverse inference, and appropriate orders will be passed. Even then, no records were placed before us for perusal. It is to observe that direction in this regard was also issued by the learned Single Judge of the High Court on 27.07.2011 but except the report of Principal Secretary and affidavit, nothing was produced. In the cases where mere allegation of fraud has been made without any foundation, and then the records have been called by the Court to assess such allegations, it is the earnest duty of the Head of the Department to produce the same for perusal. Otherwise in the facts, it was incumbent upon him to conduct an internal enquiry and to find out whether the process of selection was carried out or not. It was also the duty of the Head of the Department to place such record before the court. In the present case, if the said record was not traceable, then it is the duty of the Department to identify who is responsible for misplacing such record, and an enquiry in this regard ought to have been conducted against the defaulting person and report in that regard should have been placed. In absence thereof, mere plea of non-traceability of the record is insufficient. Thus, despite granting multiple opportunities, which resulted in non-production of the record, in the above facts, we are constrained to draw adverse inference against the respondents.
- 22) In view of the above, in absence of any foundation of fraud in the pleading or in the counter affidavit, we are not inclined to accept such plea of fraud. Moreover, the reason of termination as mentioned in the order impugned is also contrary to the documents placed on record.

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This is a case wherein after appointment the appellant has worked for more than 16 years regularly and was regularly paid salary by the department, which is a fact. As such, he has acquired the status of permanent employee. Thereafter, such issuance of show cause notice by merely referring to one LPA and the correspondence of the department regarding non-issuance of appointment order is improper. Because, a mere correspondence stating non-issuance is not sufficient to prove an allegation of fraud and warrant termination from service. In our view, mere bald statement that the appointment was based on forged document or on fraud is not sufficient. In case after such a long time of service, if the department was of the opinion that the order of appointment is not available on record, an enquiry should have been conducted for looking into the alleged forgery in issuance of the appointment order. In absence of any such enquiry, such allegations of fraud and fabrication leading to termination are unjustified.

- 23) As per the discussion made hereinabove, in the facts and circumstances, an inescapable conclusion is reached that the order of termination is based on a reasoning which is per se untenable on fact and record. The allegation of fraud has not been pleaded and substantiated. In absence of holding any enquiry of such allegation, the order of termination is liable to be quashed. The findings recorded by the learned Single Judge and the Division Bench are also without due consideration of the above facts and are not based on sound reasoning, hence, liable to be set aside.
- 24) Accordingly, we allow this appeal and set aside the orders passed by the High Court and quash the order of termination. Appellant is directed to be reinstated in service with back wages to the extent of 50% from the date of termination till his reinstatement. The appellant would also be entitled to all the consequential benefits. In light of the facts, we leave it open to the respondents to take proper recourse, if any, against the appellant following the due process of law.
- 25) Pending application, if any, shall stand disposed of.

*Result of the case:* Appeal allowed.