

(2009) 09 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42350 of 2009

Banwari Lal Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Citation : (2009) 09 AHC CK 0095

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri P.N. Saxena, Senior Advocate assisted by Sri S.N. Tiwari Advocate on behalf of the petitioner, Standing Counsel on behalf of the State Respondents and Sri R.N. Singh, Senior Advocate on behalf of the Judicial Officer.

2. Affidavit filed on behalf of Judicial Officer in response to the order of the Court dated 18.8.2009 may be taken on record.

3. Facts giving rise to the present writ petition are as follows:

Dharma Samaj Inter College, Aligarh is an aided and recognized Intermediate College. The provisions of the U/P Intermediate Education Act and the Regulations framed thereunder as well as those of U.P. High School and Intermediate Colleges (Teachers and Other Employees) (Payment of Salary) Act, 1971 (hereinafter referred to as "Act, 1971") are fully applicable to the teachers and staff of the said institution.

4. One Mahavir Prasad Sharma retired from the post of Head Clerk on 31.7.2008. The petitioner Banwari Lal Upadhyay, claiming himself to be the senior most person working on ClassIII post in the institution, set up a claim for promotion on the post of Head Clerk. By means of the order of the Authorized Controller dated 15.6.2009 one Hari Om Sharma has been held to be senior most ClassIV employee and therefore, entitled to promotion in preference to the petitioner. It

is against this order of the Authorized Controller dated 15th June, 2009 that the present writ petition has been filed.

5. Various grounds and pleas have been raised for challenging the order and a serious dispute with regard to seniority has also been raised.

6. Normally this Court would have required the petitioner to agitate his claim before the education authorities at the first instance inasmuch as without approval of the education authority no appointment on ClassIII post can be made in a recognized and aided institution.

7. Such a course has not been adopted by this Court in the peculiar facts and circumstances of the case as are on record. The interest of justice compelled the Court to examine the entire claim set up by the petitioner on its merit and to ensure that whatever fraud, has continued for long duration, is immediately brought to an end. The Hon''ble Supreme Court has repeatedly held that fraud and justice cannot go together and therefore, such exercise was undertaken by this Court resulting in issuance of notice to the Judicial Officer concerned, who is said to have granted a decree of declaration in favour of the petitioner.

8. The Judicial Officer has responded to notice and has filed her affidavit explaining the circumstances in which decree was granted in the original suit filed by the petitioner. It would be appropriate at this stage to reproduce the relevant fact leading to the filing of the Original Suit No. 136 of 1988 as also the facts stated in the plaint, which in turn resulted in ex parte decree of declaration granted by the Judicial Officer (respondent No. 7).

9. According to the plaintiff/petitioner a short term vacancy on the post of Library Clerk was caused in the institution due to grant of leave to one Sri Ashok Kumar Sharma. Against the leave vacancy the plaintiff/petitioner is stated to have made an application before the Manager of the institution, who vide order dated 28.11.1980 offered appointment to the petitioner as Library Clerk for a period up to 31.1.1981 i.e. for a period of three months only with a condition that the petitioner shall be paid salary only if financial approval in his favour is granted by the office of the District Inspector of Schools, Aligarh.

10. It appears that Sri Ashok Kumar Sharma extended his leave up to 30th June, 1981 and thereafter did not report for duty in the institution. The Committee of Management, therefore, decided to terminate the services of Sri Ashok Kumar Sharma vide its resolution dated 4.7.1982 w.e.f. 30th June, 1982. In the same meeting dated 4th July, 1982 the Committee of Management decided to offer appointment to the petitioner on the post of Librarian on probation of one year w.e.f. 01st July, 1982. For the period commencing from 01st June, 1982 the petitioner was not paid salary, inasmuch as the District Inspector of Schools vide order dated 30.10.1982 informed the Committee of Management that only one post of Head Clerk and five post of Assistant Clerk have been created in the institution, appointment of the petitioner was not against any sanctioned post and further that the resolution passed by the Committee of Management offering

appointment to the petitioner as Librarian dated 4th July, 1982 was illegal.

11. Not being satisfied with the order of the District Inspector of Schools dated 30.10.1982, bearing letter No. Patrank/S.T.01/6224/8283, petitioner filed a writ petition after nearly three years, to be precise being Writ Petition No. 10578 of 1985. The writ petition was dismissed by this Court on 29.10.1987. The order of the Division Bench of this Court reads as follows:

"There is no infirmity in the impugned order challenged in writ petition. The writ petition is accordingly dismissed.

29.10.1987.

Sd/V.N. Khare

Sd/ U.C."

12. After the dismissal of the writ petition and after expiry of six years of the order of the District Inspector of Schools rejecting financial approval to the appointment of the petitioner, he filed Original Suit No. 136 of 1988 in the Court of Second Additional Civil Judge (Junior Division), Aligarh (Banwari lal v. State of U.P. and others). A copy of the plaint has been enclosed as Annexure1 to the affidavit filed on behalf of the Judicial Officer.

13. From the array of the party as per the plaint, it is apparent that the Committee of Management/appointing authority was not made party to the suit. In paragraph 4 it is stated that, the plaintiff was appointed in the institution in place of Ashok Kumar Sharma, who was working as Librarian and left the job on 28.11.1980 and that the petitioner was appointed against the leave vacancy initially on 28.11.1980. Further in paragraph 6 it is stated that the petitioner was appointed as Librarian in place of Sri Ashok Kumar Sharma and took charge of the post and worked with pay up to 30th June, 1982 and thereafter he was appointed as Librarian on 04th July, 1982 w.e.f. 01st July, 1982. Paragraph 8 of the plaint refers to the order of the District Inspector of Schools dated 30.11.1982 disapproving the appointment of the petitioner. The ground for the same, as disclosed, was that there were only one post of Head Clerk and four post of the Junior Clerk created in the institution and no other person could be appointed except against the aforesaid posts. Thereafter reference has been made to the reply given by the management and to the fact that his appointment was made under the provisions of the Intermediate Education Act. In paragraph 11 it is stated that the petitioner is deemed to have been appointed in substantive capacity and therefore, entitled to get salary from the State respondents. The order of the District Inspector of Schools dated 30.10.1982 was termed as without jurisdiction on account of the reasons disclosed in subpara (A) to (H) of paragraph 11. Paragraphs (E) and (F) make a very interesting reading and are quoted below:

"(E) That the impugned order of the defendant No. 4 besides being void is patently illegal and highly discriminatory inasmuch as in several other institutions

the so called hurdle with regard to creation of posts and the prescribed limit has not been strictly followed.

(F) That the appointment of the plaintiff was not a fresh appointment, but against the leave vacancy and the adjustment of the plaintiff in the service of the said institution or any other institution was/is fully justified."

14. In subPara (H) of paragraph 11 it is stated that he is treated as recognized Librarian of the institution as is apparent from the certificate issued by the office of the District Inspector of Schools.

The relief prayed for in the plaint reads as follows:

"(a) It be declared that the plaintiff continues to hold the post of Librarian in Dharam Samaj Intermediate College, Aligarh and is entitled to get his salary from the defendants, alternatively if the appointment of the plaintiff is held and found to be in excess of the sanctioned limit of the posts, the plaintiff's services be accommodated/adjusted in some other recognized institution.

(b) Cost of the suit be also awarded in favour of the plaintiff against the defendants.

(c) Such or other relief to which the plaintiff is held and found entitled be also awarded in favour of the plaintiff against the defendants."

15. The letter dated 30.10.1982 is also on record as Annexure3 to the affidavit filed by the Judicial Officer, which mentions that under letter of the Deputy Director of Education, Agra dated 29.10.1979 one post of Head Clerk and four post of Routine Clerk were created with a condition that since excess number of persons are working, who will be adjusted against future vacancies to be caused, so as to maintain the sanctioned strength and future vacancies shall not be filled by direct recruitment. It is, therefore, provided that appointment of Sri Banwari Lal Upadhyay as such was in teeth of the order. Consequently, it was disapproved.

16. In the suit a written statement was filed on behalf of the defendants, who were State of U.P., Director of U.P. Intermediate Education, Allahabad, Deputy Director of Education, Agra and District Inspector of Schools, Aligarh. A copy of the written statement has been brought on record as Annexure2 to the affidavit of the Judicial Officer.

17. In paragraph 7, 10, 12, 13, 14, 25, 26 and 27 of the written statement it was specifically stated that the appointment of the petitioner was in excess of the sanctioned post and it is in this background that his appointment was disapproved by the District Inspector of Schools. It was specifically stated that there was no vacancy on ClassIII post against which petitioner could be appointed. In paragraph 27 of the written statement it was specifically stated that a Writ Petition No. 10587 of 1985 has been filed by the plaintiff against the order of the authority refusing to approve the appointment, in which counter affidavit has been filed and matter is pending before the High Court. In

paragraph 30 it was stated that the suit is barred by Sections 34, 38 and 41 of the Specific Relief Act.

18. The learned Civil Judge, despite the aforesaid, proceeded to decree the suit ex parte and granted following declaration vide judgment and order dated 10.1.1996:

19. The learned Civil Judge has held that the appointment of the petitioner was made on the post of Librarian in the leave vacancy under resolution dated 13.12.1980, which is apparently false, inasmuch as from the document filed alongwith the plaint itself it is apparent that the petitioner was appointed as Library Clerk only and not as a Librarian. The learned Judicial Officer, despite there being a mention in the written statement qua filing of the Writ Petition No. 10578 of 1985 by the plaintiff himself, did not even consider it proper to refer to the pendency of the writ petition and the consequences which would follow nor the Judicial Officer cared to obtain information from the plaintiff as to what has happened to the writ petition so filed. The Judicial Officer has also not cared to examine as to how the suit could be maintainable or entertained in absence of the appointing authority being a party to the same specifically with reference to the declaration prayed for. Lastly the Judicial Officer has not cared as to when the order of the District Inspector of Schools, refusing financial approval to the appointment of the writ petitioner, dated 30.1.1982 has not been challenged and further having not been declared as null and void by the Court concerned, how could a declaration, as has been granted under the impugned judgment and decree, could be issued. The judgment of the Court is enclosed as Annexure1 to the writ petition.

20. In my opinion the Judicial Officer has failed to discharge her duties in free and fair manner. The issue, however, remains as to whether such action of the Judicial Officer was deliberate or was a bona fide mistake. The Court will deal with the aforesaid issue later.

21. What follows from the aforesaid facts is that the suit filed by the plaintiff itself was not maintainable on the ground that there was already an order of the District Inspector of Schools refusing to accord financial approval to the appointment of the writ petitioner vide order dated 30.10.1982. The legality whereof has been upheld by the Division Bench of this Court while dismissing the Writ Petition No. 10578 of 1985 vide judgment and order dated 29.10.1987. The judgment of the Division Bench stands on record, inasmuch as it was not subjected to any further challenge. So long as the Division Bench judgment of this Court stands, affirming the order of the District Inspector of Schools refusing to grant financial approval dated 30.10.1982, no declaration by any Subordinate Court could have been issued declaring that the plaintiff was entitled to salary from the State Exchequer.

22. The power of the District Inspector of Schools to grant financial approval qua appointment of ClassIII employees in recognized and aided Intermediate

institution has been examined by a Division Bench of this Court in the case of Radhey Shyam Dube v. District Inspector of Schools, Deoria and others, 1987 UPLBEC 553, wherein after examining the scheme of the Statute, the Court came to the following conclusion :

"The first point urged by the learned counsel was that the District Inspector of Schools has no power to approve or disapprove the appointment of a teacher or an employee of an institution. He could not hence go into the validity of the petitioner's appointment. The submission is devoid of any merit. The petitioner himself has repeatedly asserted that what was sought by the District Inspector of Schools was financial approval which was undeniably necessary under the U.P. High School and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act, 1971 (the "Payment of Salaries Act" in brief) and the District Inspector of Schools has done neither more nor less than refused to accord the same. That the District Inspector of Schools does have that limited power, is fully borne out by this Act which was passed with the object of regulating the payment of salaries to teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the State funds and to provide formatters connected therewith. Under this Act the responsibility for payment of salary to teachers and employees of such institution has been cast on the State Government (vide Section 10). The Act requires the institution governed by it to open an account in a bank a separate account to be operated jointly by a representative of the Managing Committee and by the District Inspector of Schools for purposes of disbursement of salaries to its teachers and employees. Eighty percent of the fees realised by the Management has to be deposited in that account. It is from this fund and the Government grant that the salaries of teachers and employees are disbursed under the signatures of the representative of the Management and the District Inspector of Schools. Under certain circumstances the account can be operated by the District Inspector of Schools singly without the association of the Management. The responsibility cast on the District Inspector of Schools to disburse salaries necessarily carries with it an implied power to satisfy himself that the appointment of the teacher or employee whose salary he is called upon to disburse was appointed in accordance with law and in a bona fide manner. For that limited purpose he is free to make an enquiry and satisfy himself within a reasonable time."

23. The issue was reconsidered by the High Court in the case of Baij Nath Sharma v. District Inspector of Schools, Jaunpur and others, 1993(1) ESC 265 (All), wherein the Court held that the appointment as Class IV employee in recognized College is made under the provisions of U.P. Intermediate Education Act, 1921 and Regulations framed thereunder. Neither the Act nor the Regulations framed thereunder provide for approval of the District Inspector of Schools in the matter of appointment of Class IV employee. Therefore, the appointment can be made by the Appointing Authority without any approval of the District Inspector of Schools. But, while dealing with the issue of payment of salary, the Court held as under:

".....But when it come to the payment of the salary it is governed by the U.P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act, 1971 (hereinafter referred to as Act) under which the D.I.O.S. is the competent authority to decide the question as to whether the employee is entitled to the payment of salary. Whether an employee is entitled to payment of salary depends on several factors such as existence of the sanctioned post, availability of maintenance grant in respect of that post and manner and method of the appointment. Merely, because an employee has been appointed by the appropriate authority the D.I.O.S. is not bound to pay his salary under the Act unless the conditions precedent are satisfied."

24. This Court further finds that the plaintiff had deliberately concealed the filing of the Writ Petition No. 10578 of 1985 and the judgment of the Division Bench of this Court dated 29.10.1987 in his plaint. This Court has no hesitation to record that fraud has been played by the plaintiff upon the Court of Law. Since the judgment and decree has been obtained by the plaintiff by concealment of material fact qua filing and dismissal of Writ Petition No. 10578 of 1985 vide order dated 29.10.1987 by this Court.

25. "Fraud" means an intention to deceive. The expression "fraud" involves two elements, deceit and injury to the person deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (Vide *Vimla (Dr.) Delhi Administration*, 1963 Supp(2) SCR 585: (1963) 2 Cri LJ 434; and *Indian Bank v. Satyam Fibres (India) (P) Ltd.*, (1996) 5 SCC 550).

26. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representation proceeded may not have been bad. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (Vide *Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319).

27. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether

it be true or false."

28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, AIR 1994 SC 853. In Lazarus Estate Ltd. v. Besalay, 1956 All ER 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

29. In Andhra Pradesh State Financial Corporation v. M/s. GAR ReRolling Mills and another, AIR 1994 SC 2151; and State of Maharashtra and others v. Prabhu, (1994) 2 SCC 481, the Hon"ble Apex Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."

30. In Smt. Shrisht Dhawan v. Shaw Brothers, AIR 1992 SC 1555, it has been held as under:

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

31. In United India Insurance Co. Ltd. v. Rajendra Singh and others, (2000) 3 SCC 581, the Apex Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

32. The ratio laid down by the Hon"ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation.

33. Similar view has been reiterated by the Apex Court in S. Pratap Singh v. State of Punjab, AIR 1964 SC 72; Ram Chandra Singh v. Savitri Devi and others, (2003) 8 SCC 319; and Wee Chairman, Kendriya Vidyalaya Sangathan and another v. Girdhahlal Yadav, (2004) 6 SCC 325.

34. The Common Law doctrine of public policy can be enforced wherever an action affects/offends public interest or where harmful result of permitting the injury to the public at large is evident.

35. More so, if initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "Subla Fndamento cedit opus" a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. Nullus Commodum capere Potest De Injuria Sua Propria. (Vide Union of India and others v. Major General Madan Lal

Yadav (Retd.), AIR 1996 SC 1340). The violators of law cannot be permitted to urge that their offence cannot be subjectmatter of inquiry, trial or investigation. (Vide Lily Thomas and others v. Union of India and others, JT 2000 (5) SC 617).

36. No person can claim any right arising out of his wrong doing. (Juri Ex Injuria Non Oritur).

37. In view of the law so declared, this Court holds that the judgment and decree obtained by the plaintiff from the Civil Court be declared null and void. It is ordered accordingly.

38. There is an other reason for the same conclusion i.e. as on date there are in existence two contrary orders of the two Courts of law in the matter (a) the order of the Division Bench of this High Court upholding the order of District Inspector of Schools refusing salary to the petitioner plaintiff from public exchequer (b) order of the inferior Court of law declaring that petitioner plaintiff is entitled to salary from the State exchequer. This uncognizable situation can only be avoided by ensuring that the law of the land prevails and the declaration of the inferior Court of law be declared dead, a waste paper.

39. Two issues which now arise are as to what further action is required to be taken against the Judicial Officer, who has passed the judgment and decree and what orders are to be passed qua the money being recovered from the petitioner, which he has derived as salary because of fraudulent decree obtained by him from the Civil Court.

40. So far as the first issue is concerned, Sri R.N. Singh, Senior Advocate on behalf of the Judicial Officer submitted that the Judicial Officer has a career of 17 years as on date and his character roll is unblemished, a mistake has been committed but such mistake of Judicial Officer cannot be termed mala fide nor can it be said that it was for ulterior motives. He, therefore, submits that no action against the Judicial Officer is required. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the cases of K.P. Tiwari v. State of M.P., reported in 1994 Supp (1) SCC 540 (Para 4) and P.C. Joshi v. state of U.P. and others, reported in JT 2001 (6) SC 239 (Para 6).

41. He further submitted that in identical set of facts where the District Inspector of Schools had disapproved the appointment of ClassIII employee in a recognized Intermediate College, the Division Bench of this Court has held that there was no provision for approval being obtained from the District Inspector of Schools qua ClassIII appointment and therefore, proceeded to issue a direction for payment of salary to the employee concerned without setting aside the order of approval of District Inspector of Schools. Reference 1982 UPLBEC 232; Om Prakash v. District Inspector of Schools.

42. The contention so raised on behalf of the Judicial Officer may not detain the Court any further, inasmuch as what has been noticed herein above by the Court following undisputed facts were on record in the suit before the Judicial Officer:

(a) appointing authority i.e. Committee of Management was not a party to the suit.

(b) filing of writ petition before the High Court against the order of the District Inspector of Schools dated 30.10.1982 was on record but the Judicial Officer did not care to obtain information of the outcome of the writ proceedings.

(c) even without declaring the order of the District Inspector of Schools dated 30.10.1982 as null and void, which was operative in the eyes of law, declaration has been issued for payment of salary from the State Exchequer.

(d) it has not been examined as to whether the appointment claimed in a recognized and aided institution entitling salary from the State Exchequer was made after following any procedure known to law or not.

(e) Could a declaration as per the judgment could be issued when the plaintiff had himself in Para 11 (g) disclosed that nonavailability of the post was the reason for financial disapproval by the District Inspector of Schools.

43. This Court is not required to examine as to whether the Judicial Officer has committed a bona fide mistake or has misconducted herself, inasmuch as such issues are to be examined by the disciplinary authority under whom the Judicial Officer is serving. However, in any view of the matter the judgment and order of the Judicial Officer cannot be permitted to go unnoticed, inasmuch as in the opinion of the Court such orders do lower the esteem of the Courts of law and ultimately reflect upon the judicial system of the State. The Court leaves the matter at this stage only for the competent authority to take appropriate action.

44. For the purpose let the records of this judgment alongwith writ petition be placed before the Hon'ble The Chief Justice for taking such action, as may be warranted under law qua the Judicial Officer.

45. On behalf of the plaintiffpetitioner Sri P.N. Saxena, Senior Advocate has vehemently contended that against the ex parte judgment and decree an application was made under Order IX Rule 13 of the C.P.C, which was rejected by the trial Court, against which a revision was filed which was also dismissed by the District Judge and thereafter Writ Petition No. 14031 of 1996 was filed, which has also been dismissed. The order of the Writ Court dated 7.4.1999 passed in Writ Petition No. 14031 of 1996 has been enclosed as Annexure4 to the writ petition. It has, therefore, been submitted that the judgment and decree of the trial Court stands affirmed up to Hon'ble High Court and this Court exercising writ jurisdiction cannot sit in appeal over the said judgment and decree as affirmed by the High Court.

46. The contention so raised has only been stated to be rejected. The order of the Writ Court, which is stated to be an order of conformance of the ex parte decree, is an order passed on an application filed under Order IX Rule 13 of the C.P.C. The writ arising out of an order passed under Order IX Rule 13 of C.P.C. cannot be said to be an order of affirmance of the judgment and decree by this

Court, as has been asserted by the counsel for the petitioner. Considerations for deciding an application made under Order IX Rule 13 of the C.P.C. are entirely different v/zawzthe issue which needs examination while confirming a judgment and decree passed by the trial Court on merit.

47. In view of the aforesaid, I am of the considered opinion that the order passed by this Court in Writ Petition No. 14031 of 1996 dated 7.4.1999 cannot in any way be read as conformance of the ex parte decree nor such order can in any way infuse life in a decree which was obtained by fraud.

48. So far as the plaintiff is concerned, this Court holds that he was and is not entitled to salary from public exchequer past and future on the strength of declaration obtained by fraud from Civil Judge (Jr. Division) in Original Suit No. 136 of 1988. Petitioner must return the monetary benefits, which he has drawn on the strength of the fraudulent declaratory decree obtained by him from the Civil Court, to the State Exchequer, inasmuch this Court will not permit a person to go scotfree with the monetary gains obtained on the strength of, fraud/ deliberate misrepresentation in the Court of Law.

49. A time has come when alongwith substantial justice complete justice is required to be done. In the opinion of the Court complete justice demand that not only the illegality committed is set aside by this Court, the beneficiary of such illegality and persons who created such situation, must be made to repay the benefits drawn. Whatsoever indulgences in such practice must remember that on fraud being detected, the same shall be ultimately crushed by the Court of Law with iron hand.

50. This Court, therefore, directs that the plaintiff shall return the entire salary derived from the State Exchequer on the strength of fraudulent decree in four equal quarterly installments. The first being payable by 30th November, 2009 and thereafter the second, third and fourth being payable by 28th February, 2010, 31st May, 2010 and 31st August, 2010 respectively. In case of default in payment of any installment so fixed, the District Magistrate concerned shall recover the same as arrears of land revenue and shall deposit the same in the relevant Government Account.

51. Writ petition is dismissed with the aforesaid direction. Registry to take appropriate action with in two weeks.