
(2025) 08 AHC CK 0641
In the Allahabad High Court
Case No : Writ Petition A No.12839 of 2023

Shiv Kumar

APPELLANT

Vs

State Of U.P. And 8 Others

RESPONDENT

Date of Decision : 05-08-2025

Acts Referred:

Evidence Act, 1872 — Section 45, 46, 73, 114

Citation : (2025) 08 AHC CK 0641

Hon'ble Judges : Abdul Moin, J

Bench : Single Bench

Advocate : Surya Narayan Mishra, Jyoti Sikkane Mehrotra, Kuldeep Kumar Awasthi, Anurag Srivastava, Durga Prasad Dwivedi, Sharad Dwivedi

Final Decision : Dismissed

Judgement

Manju Rani Chauhan, J

1. Heard Mr. Adarsh Singh, learned counsel for the petitioner, Mr. Gaurav Bishan, learned counsel for the respondent no.5 as well as Mr. Hare Ram, learned Standing counsel for the State and perused the record.

2. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 31.05.2023, whereby he has been terminated from service on the ground that, while seeking compassionate appointment following the death of his father in harness on 02.11.1998, he failed to disclose in his application dated 17.05.2000 the material fact that his mother was already employed in government service.

3. Brief facts as stated by the counsel for the petitioner are that the petitioner's father, who was serving as an Assistant Teacher in the Junior High School, Toksin Block, District Mursan, District Hathras, passed away while in service on 02.01.1998. He was survived by his wife, one son, and two daughters, as mentioned in paragraph 5, who were all dependent on him.

4. The petitioner filed an application seeking compassionate appointment along with relevant documents pertaining to the family's economic condition, as well as a notarized affidavit of no objection from the family members before the District Basic Education Officer, Hathras. After conducting the necessary enquiry, the officer appointed the petitioner to the post of Junior Clerk on 12.07.2001.

5. The petitioner diligently performed the duties of the said post to the satisfaction of his superior officers and was subsequently promoted to the position of Senior Clerk on a vacant post on 16.10.2006. During this period, no complaints or adverse remarks were recorded against the petitioner.

6. The petitioner was also granted the benefits of the Assured Career Progression (A.C.P.) scheme along with the corresponding grade pay, after due verification and full satisfaction of the senior officials of the department.

7. A complaint was lodged by an unidentified individual against the petitioner which contained several vague and unsubstantiated allegations. One of the accusations in the aforesaid complaint was that ambiguous or misleading information had been provided by the petitioner to secure an appointment on compassionate grounds.

8. Pursuant to the aforesaid complaint, an inquiry was conducted against the petitioner on multiple occasions following notice to him. However, without due consideration of the reply submitted by the petitioner, the impugned order was passed in an arbitrary and unjust manner.

9. Learned counsel for the petitioner submits that the petitioner as a matter of fact, did not conceal any material fact vide seeking compassionate appointment. He further submits that at that time i.e in the year 2000, when the application for compassionate appointment was given by the petitioner, there was no form prescribed as such which required particular information to be furnished. The petitioner has submitted all the relevant documents like the affidavits regarding no objection of the family members, including a notarized affidavit dated 28.07.2000 given by his mother, wherein it has been mentioned that she is working as an Assistant Teacher in Prathamik Vidhyalay Bahrapur, District-Aligarh. The said affidavit is annexed as Annexure No.1 to the rejoinder affidavit. After due verification of the documents, the petitioner was offered appointment on compassionate ground.

10. Thus, from the aforesaid facts, it cannot be said that the petitioner concealed any material information/fact from the respondents for seeking appointment on compassionate ground. Hence, the ground assigned in the impugned order is absolutely unsustainable.

11. Learned counsel for the petitioner further contends that the relevant rules regarding compassionate appointment came into effect on 04.09.2000 and the applicant moved the application for appointment on compassionate ground prior to enforcement of the aforesaid rules. The petitioner was of tender age, not

understanding the intricacies involved while moving an application however, he has submitted all the relevant documents which were duly verified by the respondents, prior to giving appointment to the petitioner.

12. He further contends that the entire exercise, prior to passing the order impugned, was initiated on a complaint by some unknown person that too after 19 years of appointment of the petitioner, on which the inquiry was initiated and without considering the reply of the petitioner wherein all the facts about aforesaid affidavit have been mentioned, order impugned has been passed in an arbitrary manner. While supporting his case and meeting the grounds as raised in the order impugned, the learned counsel for the petitioner has relied upon the judgment passed in Writ-A No.-4597 of 2024 (Smt. Sugandha Upadhyay vs. State of U.P. And 2 Others) as decided on 23.08.2024, in which it has been observed as follows :-

"The petitioner had submitted her application seeking appointment on 07.11.2012, i.e., when the petitioner was merely 18 years of age. The petitioner, at that age, cannot be expected to have read the Rules, 1974. The petitioner submitted a simple application which was not on any prescribed proforma stating her relationship with the deceased, her occupational skills and educational qualifications and sought compassionate appointment in place of the deceased claiming herself to be a family member and dependent of the deceased employee. The mother of the petitioner also submitted an affidavit declaring her no-objection to the appointment of the petitioner in place of the deceased. There was no misrepresentation by the petitioner regarding the employment status of her mother in the sense that the petitioner had not represented in her application that her mother was not employed with the State Government or Central Government or any corporation owned or controlled either by the State Government or the Central Government. The mother of the petitioner was employed as Class - IV employee in the Labour Department itself. It cannot be believed that the selection committee and the appointing authority had no knowledge or information regarding the fact that the mother of the petitioner was already employed with the State Government. There is nothing on record to show that the department had sought from the petitioner the details of the family members of the deceased, especially as to whether any family member or the spouse of the deceased was already employed. By order dated 07.05.2024, this Court had asked the Standing Counsel to annex the application form submitted by the petitioner seeking employment and also to explain as to whether the details regarding other dependents of the deceased employee were sought from the petitioner while considering her application for compassionate appointment.

In the present case, the petitioner was appointed ten years back and had been confirmed in service. Considering the length of service of the petitioner, it is too late for the respondents to cancel the appointment of the petitioner on the ground of the prohibition incorporated in Rule 5 and the employment status of

her mother.”

13. Against the order passed in the aforesaid case, a Special Appeal No.-5 of 2025 (State of U.P. Through Its Principal Secretary And 2 Others vs. Smt. Sugandha Upadhyay) was filed which has been decided on 24.01.2025, wherein the Court while dispersing the appeal of the State and affirming the order passed by the learned Single Judge has held as follows :-

“8. Learned Single Judge had mentioned that she had not stated that her mother was not employed with the State Government or the Central Government or any corporation owned or controlled either by the State Government or the Central Government. Learned Single Judge had also found that the mother of the petitioner was employed as Class-IV employee in the Labour Department itself and it was not believable that the Selection Committee and the Appointing Authority had no knowledge or information regarding the fact that the mother of the petitioner was already employed with the same department of the State Government. Learned Single Judge has thereafter found that there was absolutely no fraud committed by the petitioner. He had also found that the petitioner had already worked for ten years and her services had been confirmed and also the petitioner had been promoted after her initial appointment and the writ petition thereafter was allowed.

9. Learned counsel for the appellants has submitted that when there is a fraud committed then no length of service had to be seen and that no departmental inquiry etc. had to be gone into. He submits that fraud had been committed therefore the services of the petitioner had to be done away with, and in support of this submission, he relied on the decisions in Anoop Kumar Srivastava Vs. State of UP and others, 2021 (6) AWC 5341, and Sumit Kumar Verma Vs. State of UP and others 2022 (2) AWC 1683 (LB).

10. Learned counsel for the petitioner (respondent herein) has submitted that the petitioner had not concealed any aspect of the matter. All facts were disclosed by the petitioner. Mother of the petitioner had given an affidavit to the effect that she had no objection to the appointment of the petitioner. The appointment was preceded by a full fledged proceeding wherein the Selection Committee of the Department where the mother was working had assembled and thereafter the department itself had issued the appointment letter. Learned counsel for the petitioner therefore states that the judgments which had been relied upon by the learned counsel for the appellants had no application in the present case.”

14. The matter travelled up to the Apex Court and Special Leave Petition to Appeal No.6320 of 2025 (State of U.P. & Ors. vs. Sugandha Upadhyay) was filed and the Special Leave Petition filed by the State was dismissed.

15. Thus, the learned counsel for the petitioner submits that from the aforesaid, it was clear that after so many years of service, the petitioner could not have been terminated on the ground of concealment of the fact that the petitioner’s

mother was in government service, which has not been proved.

16. In support of his submission, learned counsel for the petitioner has also relied upon a judgment passed in Writ-A No.-2134 of 2023 (Uday Pratap Singh vs. District Basic Education Officer, Basti And 2 Others) as decided on 08.08.2023. The relevant paragraphs are quoted herein below :-

"48. Essence of the time and length of service is of paramount importance in the matters of cancellation of appointment on the ground that the initial appointment is contrary to the provisions of rules or government orders. If immediately after the appointment, authorities would have acted upon and the appointment of the petitioner was cancelled, then definitely no interference by this Court was warranted but where initial compassionate appointment was made 19 years back and there was no concealment of facts at the time of the said appointment, the same cannot be cancelled after elapse of 19 years on the ground that the initial appointment was made in violation of some provision of government order. Even further, in the present case departmental authorities, at no point of time, ever noticed that petitioner's appointment on compassionate ground was made contrary to the provisions of Government Order dated 04.09.2000 rather the exercise of cancellation of the petitioner's appointment has been done after elapse of 19 years on the behest of private complainant, therefore, in the given facts and circumstances of the case, the order dated 30.12.2022 whereby appointment of the petitioner has been cancelled, cannot sustain in the eyes of law.

49. The order dated 30.12.2022 whereby services of the petitioner have been terminated by cancelling his appointment from the date of his initial appointment is also not sustainable on another ground as regular disciplinary proceedings were initiated against the petitioner by issuing him a charge-sheet to which he submitted reply but thereafter neither the procedure for conducting disciplinary inquiry was adopted nor inquiry report was submitted. It is well settled proposition of law that once disciplinary proceedings have been initiated by issuing a charge-sheet then the procedure prescribed for holding disciplinary inquiry has to be followed and on the basis of the inquiry report, disciplinary authority will issue a show cause notice and after taking reply, the final order in the disciplinary proceedings will be passed whereas in the present case though charge-sheet was issued to the petitioner and his reply was taken but thereafter procedure as provided under Rule 7 and Rule 9 of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 has not been followed, therefore, the final order passed by the District Basic Education Officer on 30.12.2022 cannot sustain in the eyes of law.

50. In view of the aforesaid reasons, this writ petition is allowed. The order dated 30.12.2022 passed by the District Basic Education Officer, Basti is quashed. Respondent No. 1 i.e. District Basic Education Officer, Basti is directed to reinstate the petitioner in service forthwith and to pay his salary along with arrears."

17. Against the aforesaid, Special Appeal Defective No.- 870 of 2023 (Basic Shiksha Adhikari And Another vs. Uday Pratap Singh And Another) was filed and the same was dismissed vide order dated 19.01.2024. The relevant paragraphs are quoted herein under :-

"10. Facts as have been noticed above are not in issue. It remains undisputed that respondent claimed compassionate appointment in the year 2000 and was offered such appointment in 2003. The father of the respondent had clearly given an affidavit wherein it was mentioned that he was employed in the Education Department of the State. From such material it can clearly be deduced that the factum of the father of the respondent being in Government Service was a fact clearly made known to the authorities and it can therefore not be asserted by the appellant that there was any fraud or misrepresentation made on part of the respondent.

11. It is undisputed that the legality of compassionate appointment offered to respondent was challenged before the authorities and after an appropriate inquiry, the matter was dropped in the year 2013. A PIL writ petition was also dismissed in that regard in the year 2014. Though, the PIL was also dismissed on the ground that it was not entertainable in service matters, yet the Division Bench did take note of the fact that the appointment was made more than ten years ago.

12. In such circumstances, we are of the considered opinion that the compassionate appointment offered to the respondent ought not to be interfered with after 20 years when the fault in issuing such appointment was attributed to the Department itself. The view taken by the learned Single Judge, therefore, is a permissible view with which we find no reasons to disagree. The equity clearly stares against the appellants."

18. The matter went up to the Apex Court wherein a Special Leave Petition (Civil) Diary No.7348 of 2024 (Basic Shiksha Adhikari, District Basti & Anr vs. Uday Pratap Singh & Anr.) was filed by the State and the same was dismissed vide order dated 16.04.2024.

19. Similar controversy was also dealt by this Hon'ble Court in Writ-A No.2058 of 2024 (Vishwaroop vs. State of U.P. Thru. Addl. Chief Secy. Agriculture Deptt. Lko. And 3 Others) which was decided on 15.10.2024. In the aforesaid case, the Court has held as under :-

"12. Hon'ble the Supreme Court in similar circumstances where the individual had obtained compassionate appointment de hors the rules and his appointment was set aside after a period of 15 years, it was held that the same was not justified in terminating such an appointment. The relevant paragraphs of the judgment of the Supreme Court in the case of Md. Zamil Ahmed Vs. The State of Bihar & Ors., Civil Appeal No. 4815 of 2016) is quoted herein below:-

"14) Keeping in view the peculiar undisputed facts of the case and having regard

to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of appellant's appointment does not appear to be well founded. This we say for the following reasons:

15) Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact and nor filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased family on affidavit.

16) Secondly, the appellant, who is the brother of the deceased, undertook to maintain the family of the deceased in the event of his securing the compassionate appointment and he accordingly also gave such undertaking to the State."

13. It is in the aforesaid circumstances, this Court is also of the considered view that there was no justification on the part of the State to have woken up after a lapse of 12 years and found infirmity in the appointment of the petitioner and quashed the same. Further there is no allegations that the petitioner had concealed any material fact or some fact was found out by the State after a substantial length of time necessitating termination of his services. Once a finding has been recorded that the petitioner was not responsible for suppression of any material fact in securing his appointment then the onus lay upon the State to have examined the entire facts prior to giving him appointment on compassionate grounds. For the lapse if any of the State the services of the petitioner cannot be terminated after a lapse of 12 years."

20. Against the aforesaid, Special Appeal Defective No.- 93 of 2025 (State of U.P. Thru. Addl. Chief Secy. Agriculture Deptt. Lko And 3 Others vs. Vishwaroop) was filed and while dismissing the Special Appeal of the State vide order dated 04.03.2025, the Court has held as follows :-

"13. We equally notice that the erring Officer who has made the appointment was not proceeded against for the wrong committed by him and it is in this background that the respondent, who has not concealed any fact in the application made, is rather subjected to a severe consequence. The State Government, in such a situation, must visit the erring Officials with a stern message in absence of which, the decision taken against the employee concerned does not appear to be in good faith and does not appear to be the right approach of rectifying the mistakes committed by the Officers of the State discharging onerous and responsible duties."

21. The learned counsel for the petitioner has also placed reliance upon the order passed in Writ-A No.-11785 of 2021 (Rahul vs. State of U.P. And 6 Others) wherein while allowing the writ petition vide order dated 18.04.2025, the Court has held as follows :-

"2. By means of this petition filed under Article 226 of Constitution of India, the petitioner has challenged the order dated 28.08.2021 whereby petitioner's services have been dispensed with only on the ground that while seeking compassionate appointment for his father dying in harness on 01.02.2008, vide application dated 29.02.2008, he concealed this material fact that his mother was already under Government service.

10. Having heard learned counsel for the respective parties and having perused the record, I find that it is a case where there was no prescribed format provided for a candidate seeking compassionate appointment to disclose every detail of the family including the status of each member of the family. It is true that the affidavit was filed by the mother of petitioner giving no objection in favour of the petitioner and she might not have disclosed the fact that she was a Government employee but the family register was before the authorities which showed that the mother of the petitioner who was a widow of late father of the petitioner was very well in the employment. I have perused the family register filed as Annexure No.2 that discloses the petitioner's mother to be in service.

11. Besides the above, I may observe here that in cases of compassionate appointment where the family suffers mental shock due to sudden death of bread earner of the family as in this case the father, the family cannot go into the technical niceties involved while moving application for compassionate appointment. It is a burden more upon the authorities to carry out verification as to the details of the family and its status. If the authorities themselves failed to verify the facts which was apparent on the fact of record then person appointed on compassionate basis could not be blamed for concealing any such fact. It is well established principle of law that fraud being a matter of fact cannot be presumed and so shall have to be proved by the party taking plea of fraud. It is a duty cast upon the authority to verify the records to look into them minutely. If no format is prescribed regarding disclosure of a particular fact, then non-disclosure of such fact cannot form a charge of misconduct. Moreover, in matters of compassionate appointment, which is permanent in nature, employer if finds an employee to have committed fraud in seeking appointment then that charge should be established by holding a full fledged enquiry under discipline and appeal rules as may be applicable to the establishment.

12. In these facts and circumstances and also in so far as the summary proceedings that have been drawn in the matter of annulment of employment of the petitioner, I find myself in full agreement with the view of the co-ordinate Bench of this Court that a proper procedure ought to have adopted. I also find that the Division Bench as well as the Supreme Court has very clearly held that once the employment has been offered and the facts were before the authorities, after such a long gap of a decade or so such appointment should not be annulled. Looking to the facts that the family has survived due to the earning of the petitioner and petitioner also might have got married and may also having a family absolutely dependent upon him, subsequently I do not find any

justification for cancelling the application of the petitioner.”

22. He has also placed reliance upon the case of Md. Zamil Ahmed v. State of Bihar, reported in (2016) 12 SCC 342. The relevant paragraphs are quoted herein below :-

“11. Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of the appellant's appointment does not appear to be well founded. This we say for the following reasons:

11.3. Thirdly, there was no one in the family of the deceased to claim compassionate appointment except the appellant who, as mentioned above, was the close relative of the deceased i.e. real younger brother and used to live with the deceased. He was otherwise eligible to claim such appointment being major, educated and only male member in the family.

13. The fact that the appellant was the younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of “dependant” at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment.”

23. Thus, on the aforesaid submissions, impugned order is liable to be quashed.

24. Learned counsel for the respondents submits that there is no illegality or infirmity in the impugned order. It is contended that, following an inquiry, the petitioner's appointment was found to be in violation of the Dying-in-Harness Rules, as framed under the Government Order dated 04.09.2000, which governs appointment on compassionate grounds. The said rules expressly prohibit the appointment of a dependent of a deceased employee if the spouse of the deceased is already employed in a government service. This restriction is clearly stipulated under Rule 3(1) and Rule 5 of the applicable rules, as well as in the aforementioned Government Order. It is further submitted that the petitioner, by concealing this material fact, secured appointment in contravention of the rules, rendering the appointment illegal and unsustainable in law.

25. The counsel for the respondents submits that in support of the no objection affidavit, the declaration given by the petitioner's mother as well as other family members, does not disclose the fact that the petitioner's mother was employed as an Assistant Teacher at the Primary School, Behrampur, Block Iglas. This amounts to a clear act of concealment on the part of the petitioner, as neither the petitioner, his mother, nor any other family member revealed that the petitioner's mother was a government employee at the time of the petitioner's father's demise.

26. In paragraph nos. 14 and 15 of the counter affidavit, the respondents

contend that the entire proceedings were initiated based on a complaint submitted by Virendra Kumar Sharma, pursuant to which a show-cause notice was issued to the petitioner. However, the petitioner, in an attempt to manipulate the process, produced a forged signature purportedly of the complainant, asserting that no such complaint had ever been filed.

27. Emphasizing upon Rule 5 of the Dying-in-Harness Rules, the Counsel for the respondents submits that compassionate appointment cannot be granted if the spouse of the deceased employee is already employed in a government job. In the present case, the petitioner was appointed on compassionate grounds despite the fact that the petitioner's mother was serving in a government post at the relevant time, rendering the appointment irregular and in contravention of the established rules.

28. Placing reliance upon a judgment dated 15.10.2024 passed in Special Appeal Defective No.506 of 2024 (Distt. Basic Education Officer and Another vs. Smt. Punita Singh and 3 Others) wherein order passed by learned Single Judge in the case of Smt. Punita Singh and 3 Others relating to the petitioner therein, who had procured appointment on the basis of forged documents, which was allowed by the Single Judge, has been set-aside.

29. He, therefore, contends that the petitioner is not entitled to any relief in view of the observations of the Court in the aforesaid Special Appeal as he has sought appointment by concealing material fact of his mother being in government job at the relevant point of time, therefore, his appointment cannot stand.

30. In the aforesaid Special Appeal, the Division Bench of this Court has held as follows :-

"18. A Division Bench of this Court in Zila Basic Shiksha Adhikari, Balrampur Vs. Anand Kumar Tripathi and others : 2024:AHC-LKO:37313-DB, in a case where compassionate appointment accorded to the respondent therein, was terminated on account of failure to produce relevant documents as regard his parentage, etc., the Division Bench, on the question whether in such case show cause notice should be issued and thereafter order of cancellation of appointment should be passed or a full fledged inquiry in terms of Rules of 1999 should be held followed by removal or dismissal, came to the conclusion that disciplinary proceedings are ordinarily initiated if any misconduct has been committed after joining service, therefore, if the initial appointment itself was fraudulent, then referring to the judgment of Hon'ble Supreme Court in R. Vishwanatha Pillai Vs. State of Kerala and others : (2004) 2 SCC 105, and Patna High Court judgements in Ishwar Dayual Sah Vs. State of Bihar : 1987 Lab IC390 and Rita Mishra Vs. Director, Primary Education : 1988 Lab IC 907, came to the following conclusion:

"12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of

appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in the aforesaid decision of the Supreme Court.

13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed."

19. Recently, Hon'ble Supreme Court in Union of India Vs. Prohlad Guha etc.: 2024 SCC OnLine SC 1865, in a case where the writ petitions filed by the employees were allowed for not following the Railway Servants (Discipline & Appeal) Rules, 1968 and on coming to the conclusion that qua a person in regular service, the dismissal cannot take place sans any disciplinary inquiry, while setting aside the judgement, came to the following conclusion:

"13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers observed -

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest

artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. ...From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

.....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a Section on existence or non-existence of which power can be exercised.

13.1. The words of Denning L.J. in *Lazarus Estates Ltd. v. Beasley* are of importance qua the impact of fraud. He wrote -

".....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage 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 judgment, contract and all transactions whatsoever..."

13.2. 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; *Derry v. Peek*; *Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education*]

13.3 In *R. Vishwanatha Pillai v. State of Kerala*, a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.

14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in *Vishwanatha Pillai* (supra) answers the question. The Respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a

post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in *Devendra Kumar v. State of Uttaranchal*. In paragraph 25 thereof it was observed -

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit 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. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide *Union of India v. Major General Madan Lal Yadav* [(1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340] and *Lily Thomas v. Union of India* [(2000) 6 SCC 224: 2000 SCC (Cri) 1056].) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)."

(Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the Respondent-employees' Original Applications is restored. The Respondent-employees were rightly dismissed from service by the Appellant-employer.

....."

20. From the above, it is well established that in case, the employment has been obtained based on fraudulent documents, the beneficiary of such fraud cannot seek that procedure prescribed under the Rules of 1999 must be followed.

21. So far as the judgment in the case of *Smt. Parmi Maurya* (supra) relied on by counsel for the respondent is concerned, it was a case where the Division Bench came to the conclusion that petitioner therein, was not afforded adequate opportunity of hearing. However, in the present case, it is *ex facie* clear from the order impugned that she was provided adequate opportunity with regard to her documents being forged and fabricated and the only plea raised by her was that she would produce duplicate copies of the said documents and neither in the writ petition nor in the present appeal, she has been able to produce any further document/material to substantiate that the mark-sheets issued to her, were not forged and fabricated."

31. Thus, the counsel for the respondents submits that it is well established that in case the employment has been obtained based on fraudulent documents on concealing material fact, the beneficiary of such fraud (petitioner in the present case) cannot seek that proper procedure as prescribed under law has not be followed while passing the impugned order.

32. Relying upon another judgement passed by the Apex Court in Civil Appeal No.7353-7354 of 2009 (*Rajesh Kumar vs. Union of India Through Chief Of Army*

Staff & Ors.) as decided on 11.11.2021, learned counsel for the respondents submits that the Apex Court in the aforesaid case has observed that in the event of any suppression or on submitting forged information, it is always open to the employer to cancel the candidature or terminate the services of any employee. For reference, paragraph no.32 of judgment passed in the case of Avatar Singh vs. Union of India & Ors reported in (2016) 8 SCC 471 which has been relied upon in the aforesaid case is quoted herein under :-

"32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services."

33. Answering the objections as raised by learned counsel for the respondents, the learned counsel for the petitioner submits that there has been no concealment of material fact that the petitioner has not disclosed about his mother being in government job as an affidavit dated 28.07.2000 has been given by the petitioner's mother requesting for original pension, denying claim of dearness allowance wherein it has been mentioned that she is in service in Parishadiya School. The aforesaid document is placed on record. As regards the other objections regarding the conduct of the petitioner while managing the complaint on which the inquiry was done, the respondents have failed to produce any evidence against the petitioner and at a later stage, the complaint was also found to be false. The learned counsel for the petitioner has already placed his submission to show that there was no concealment of fact and no fraud has been played by him, therefore, the order impugned is arbitrary and may be set-aside.

34. He further contends that non-disclosure of a fact not required to be disclosed under law does not ordinarily amount to fraud or forgery. To establish fraud or forgery, there must be intentional concealment or misrepresentation of a material fact which the law obligates to be disclosed, and such misrepresentation must have induced another party to act to their detriment. He also submits that it is settled position of law that mere non-disclosure of a fact is not fraud unless there is a duty to speak. Silence cannot be considered fraudulent unless there's an obligation to disclose. It also clarifies that unless there is a legal duty to disclose a material fact, non-disclosure itself is not fraud.

35. In support of his submissions, learned counsel for the petitioner has relied upon several judgments :-

(i). In the case of S.P. Chengalvaraya Naidu (dead) by LRS v. Jagannath (dead) by LRS & Ors., reported in (1994) 1 SCC 1, the Apex Court has opined that fraud is an act of deliberate deception to secure an unfair advantage. Suppression of material facts which are mandated to be disclosed amounts to fraud. This case helps in distinguishing between a required disclosure and mere omission. Fraud requires concealment of mandatory material facts.

(ii). In the case of R. K. Anand v. Registrar, Delhi High Court, reported in (2009) 8 SCC 106, it was held that forgery requires fabrication of a false document with intention to cause damage or injury and, therefore, non-disclosure alone does not amount to forgery unless there's falsification of documents.

(iii). In the case of Union of India v. M. Bhaskaran, reported in 1995 Supp (4) SCC 100, the Hon'ble Supreme Court ruled that if a person gains public employment through false representation or forged documents, the appointment is void ab initio reinforcing that forgery arises only where false documents are used, not through omission or silence.

(iv). The English Court in the case of Lazarus Estates Ltd. v. Beasley, reported in [1956] 1 QB 702 (UK case, often cited in Indian courts) has famously stated that "Fraud unravels everything" but clarified that such fraud must involve deceit or concealment of a required truths, not mere silence unless there is a duty to disclose.

36. In view of the aforesaid, learned counsel for the petitioner further submits that if the fact was not legally required to be disclosed, then mere omission would not amount to fraud or forgery. To prove fraud, there must be intentional concealment of a material fact which must be disclosed and to prove forgery, there must be creation or alteration of a false document with intent to deceive.

37. In the present case, where no prescribed format was provided to the candidate seeking compassionate appointment for disclosing detailed information regarding each family member, it cannot be denied that a no-objection affidavit was submitted by the petitioner's mother as well as other family members. Additionally, an affidavit dated 28.07.2000 was submitted by the petitioner's mother clearly stating that she was employed as an Assistant Teacher at Prathamik Vidyalaya, Bahrapur, District Aligarh. Upon due scrutiny of the relevant documents, the petitioner was granted appointment on compassionate grounds. Therefore, it cannot be alleged that there was any concealment of fact on the part of the petitioner.

38. Learned counsel for the petitioner has also placed reliance upon the following judgments :-

(i). In the case of Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, reported in (2004) 12 SCC 299, the Apex Court has held that compassionate appointment cannot be denied on hyper-technical grounds. The objective is to provide relief to the family in distress. Procedural lapses or

absence of specific formats, unless resulting in fraud, are not fatal to the claim.

(ii). In the case of *Bharat Coking Coal Ltd. v. Shyam Kishore Singh*, reported in (2020) 3 SCC 411, the Hon'ble Supreme Court has held that when relevant documents and affidavits were examined and the authority was satisfied, challenge on grounds of concealment at a later stage must be substantiated with clear evidence of fraud or misrepresentation.

(iii). In the case of *SBI vs. Raj Kumar*, reported in (2010) 11 SCC 661, the Apex Court has opined that compassionate appointment is not a vested right, but once it is granted after proper scrutiny and no material suppression is proven, the appointment cannot be invalidated.

39. Learned counsel for the petitioner further submits that it is settled law that affidavit evidence submitted by family members is valid and binding unless proven otherwise. The appointment made on that basis after scrutiny cannot be invalidated merely on assumptions.

40. Heard learned counsels for the parties and perused the record.

41. It stands established that there was neither any misrepresentation nor concealment on the part of the petitioner with respect to the employment status of his mother. The petitioner did not suppress the fact that his mother was serving in a government post specifically as an Assistant Teacher in the same department at the time he submitted his application for compassionate appointment. It was incumbent upon the respondent authorities to undertake due diligence and conduct a proper verification of such material facts prior to extending the appointment. Since such scrutiny was duly carried out before the petitioner was offered the appointment, the benefit granted cannot be withdrawn or cancelled on account of any lapse attributable to the respondents themselves.

42. This Court further observes that the petitioner was merely 18 and a half years old at the time of submitting the application for compassionate appointment. At such a tender age, he could not have been expected to comprehend the technical requirements relating to the disclosure of the employment status of family members. In circumstances where the family is grappling with emotional distress due to the sudden demise of its sole breadwinner as in the present case, the petitioner's father the responsibility to verify and scrutinize the family particulars rests squarely upon the respondents.

43. If the authorities themselves failed to conduct due diligence and verify facts that were otherwise apparent from the record, the petitioner cannot be held liable for any alleged non-disclosure. It is a well-established principle of law that allegations of fraud must be specifically pleaded and proved by cogent evidence; fraud, being a question of fact, cannot be presumed.

44. Even the erring official, who failed to conduct proper scrutiny in a case where the petitioner's mother was employed in the same department, has not been subjected to any disciplinary action. Therefore, the petitioner cannot be penalized

in any manner for such an administrative lapse.

45. Once it is established that there was no concealment of material facts by the petitioner at the time of his initial appointment, the respondents cannot, after a lapse of 14 years, seek to reopen the issue on the ground that the petitioner failed to disclose the fact of his mother being in government service at the time of applying for compassionate appointment particularly when such disclosure was not mandated under the relevant rules.

46. Moreover, all documents submitted by the petitioner were duly scrutinized by the respondent authorities prior to the issuance of the appointment order. Therefore, at this belated stage, the petitioner's appointment cannot be annulled, especially when the delay and oversight are attributable solely to the respondents themselves.

47. Such action after an inordinate delay of 14 years, without any allegation of fraud or misrepresentation, would be arbitrary and against the principles of natural justice.

48. The Court is of the opinion that it would also be appropriate to observe that once the petitioner has been appointed on compassionate grounds and such appointment has attained finality, being a regular and permanent appointment, the same cannot be cancelled arbitrarily or without adhering to the due process of law, particularly after the lapse of several years from the date of initial appointment as is the settled position in law.

49. It is relevant to reproduce herein the observation made by the Apex Court in the case of *Shankarsan Dash vs. Union of India*, reported in (1991) 3 SCC 47 in which it has been reiterated that appointments, once validly made, cannot be disturbed except in accordance with law.

50. An irregular appointment refers to an appointment to a job or post that does not follow the proper legal or procedural rules. This may include skipping required qualifications, bypassing selection procedures, violating recruitment norms, or appointments made without proper authority or approval.

51. Unlike appointments obtained by fraud or misrepresentation, an irregular appointment may not involve any dishonest intent but still remains legally flawed or procedurally defective.

52. In the present case, it cannot be held that the appointment of the petitioner was made in violation of the established rules or without following the due procedure prescribed under law. The record reflects that all necessary formalities and verifications were duly carried out at the time of appointment. Therefore, the appointment cannot be termed as 'irregular' merely on presumptions or belated allegations. It is a settled position of law that once an appointment is made after due scrutiny by the competent authority, it carries a presumption of validity unless proven otherwise by cogent evidence.

53. In the case of State of Punjab vs. Jagdip Singh, reported in (1964 AIR 521), the Apex Court has held that a void appointment is one made without the authority of law; however, an appointment following some procedural irregularity is not void ab initio unless there is violation of essential conditions.

54. In the present case, it is evident from the record that the petitioner did not indulge in any act of concealment or misrepresentation at the time of seeking appointment. All relevant documents were submitted and duly scrutinized by the competent authority before the appointment was offered. As such, the appointment cannot be termed as illegal or void. It is a settled principle of law that an appointment made after due verification and without any fraudulent intent cannot be cancelled merely on technical grounds or assumptions. In the absence of any material irregularity or violation of the prescribed procedure, the petitioner's appointment stands on firm legal footing and is not liable to be annulled retrospectively.

55. In light of the above discussion, the writ petition is allowed. The impugned order is quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits for which he is entitled.