IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HONOURABLE SRI JUSTICE P. SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT APPEAL NO.572 OF 2026

(CNR No: HBHC010352932026)

Date: 05.11.2026

Reserved on: 22.09.2026 **Pronounced on: 05.11.2026**

Uploaded on: 05.11.2026

Between:

Nizams Institute of Medical Sciences and another

...Appellants

AND

K. Vinodhar and another

...Respondents

JUDGMENT: *(As per the Hon'ble Sri Justice Narsing Rao Nandikonda)*

Heard **Mr. Prabhakar Sripada,** learned Senior Counsel, **Mr.K. Prabhakar Reddy,** learned Standing Counsel for NIMS appearing for the appellants and **Mr. D. Goverdhana Chary,** learned counsel appearing for respondent No.1. Perused the entire material on record.

2. This Writ Appeal is filed under Section 15 of the Letters of Patent against the order passed by the learned Single Judge

in IA No.1 of 2026 in WP No.21197 of 2019 dated 24.04.2026, refusing to recall the order dated 10.11.2023.

3. The brief facts of the case are that the writ petitioner was working as a Deputy Registrar in the Nizam's Institute of Medical Sciences (NIMS) was a given a charge memo dated 16.11.2001 vide Rc.No.4/2001/PM/H2, wherein the writ petitioner was charged with misleading his superiors while preparing orders dated 31.03.2001 and thereby enhancing the benefit of enhanced scale of Pay of Rs.2,200 to Rs.4,000/- to Legal Assistant (LA) by interpolating words 'Legal Assistant' (LA) after Assistant Registrar (AR)/Assistant Finance Controller (AFC).

4. The petitioner/respondent No.1 contended that notwithstanding his reinstatement, treating the intervening period as *dies non* amounted to the imposition of a substantive punishment. Aggrieved thereby, he submitted a representation to the Director of the respondent/Institute, seeking reconsideration of the decision and a direction to treat the said period as duty for all purposes.

5. The petitioner/respondent No.1 herein also preferred a representation dated 20.08.2015 before the Hon'ble Minister for Health, Medical and Family Welfare Department, Secretariat, seeking reconsideration of the decision to treat the said period as *dies non*. He contended that such treatment amounted to a substantive punishment and was contrary to the Fundamental Rules. Accordingly, he requested the intervention of the Hon'ble Minister and sought a direction to treat the period from the date of compulsory retirement to the date of reinstatement as duty for all purposes.

6. The petitioner further stated that on 31.08.2006, the institute issued a notice proposing to treat the period during which he remained out of employment, from the date of compulsory retirement until the date of reinstatement, as a substantive punishment. The reinstatement order dated 27.09.2006 was issued upon his undertaking to accept the said treatment of the intervening period.

7. The petitioner further contended that while passing the reinstatement order, the Executive Board of NIMS had

observed that the order of compulsory retirement had been passed without following the rules and procedure prescribed by the Institute for the imposition of a major penalty. Nevertheless, the Director of NIMS subsequently passed orders treating the period from 12.06.2002 to 27.09.2006 as *dies non*.

8. It was the specific contention of the petitioner that the order treating the said period as *dies non* was passed unilaterally, without issuing any notice or affording him an opportunity of being heard. The petitioner argued that once the Executive Board had observed that the order of compulsory retirement was imposed without following the procedure prescribed under the applicable rules, the question of treating the intervening period as *dies non* did not arise.

9. The petitioner further contended that despite his representation to the Government, no orders had been passed thereon. Aggrieved by the same, he filed the writ petition No.42430 of 2016 seeking a direction to the respondents to consider and pass appropriate orders on his representation dated 20.08.2015, which was dismissed as withdrawn on

27.11.2018, and that this important fact was not disclosed before this Court while obtaining the order dated 10.11.2023.

10. The petitioner had earlier filed Writ Petition No.464 of 2003, questioning the order of the appellate authority dated 19.11.2002, whereby a fresh enquiry was directed setting aside the order under appeal. By the said order, a committee comprising respondents Nos.4 and 5 was constituted and entrusted with the task of conducting a detailed enquiry and submitting a report to respondent No.2. The said order dated 19.11.2002 was quashed and the appellate authority was directed to consider the appeal in accordance with law.

11. Thereafter, the petitioner submitted a representation dated 23.09.2002, pursuant to which the Executive Board resolved to reinstate him, treating the intervening period from the date of compulsory retirement until the date of reinstatement as a substantive punishment. Accordingly, an order was passed on 31.08.2006. The petitioner accepted the said decision and on 07.09.2006, expressed his willingness to join duty subject to the punishment imposed by the Executive Board. Subsequently, he was directed to withdraw the pending case.

On 27.09.2006, the petitioner reported for duty and was permitted to join duty in the afternoon of the same day, as reflected in the order dated 09.10.2006.

12. Thereafter, *vide* proceedings dated 16.05.2008, the Executive Registrar issued a communication directing that the intervening period from the date of compulsory retirement until the date of reinstatement from 12.06.2004 to 27.09.2006, comprising 1,569 days, is treated as *dies non*. Aggrieved thereby, the petitioner filed the present WP No.21197 of 2019 seeking the following relief:

> *"...to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus calling for records pertaining to the impugned order issued by respondent No.1 in his proceedings No.9745/VCV 2/20154 dated 22/10/2018 confirming the order of respondent No.2 proceedings issued in letter Rc.No.7/1/2006/HRD/H1 dated 27/09/2006 treating the intervening period as substantive punishment and further orders of respondent No.3 issued in his proceedings Rc.No.3/1/89H1 dated 16/05/2008 treating the intervening period from the date of compulsory retirement to the date of reinstatement i e from 12/06/2002 to 27/09/2006 1569 days as Dies non and declare the same as illegal arbitrary and also violative of Art 14 and 16 of Constitution of India besides being violative of CCA Rules and violative of principles of natural justice while issuing a consequential direction to the respondents to treat the intervening period from 12/06/2002 to 27/09/2006 (1569 days) as duty with all attendant benefits including notional sanction of increments and*

revision of pay and pension and pay arrears accordingly in the interest of justice and pass"

Having heard the learned counsel on either side, the learned Single Judge has allowed the above writ petition setting aside the impugned orders and the intervening period from the date of compulsory retirement to the date of reinstatement i.e., from 12.06.2002 to 27.09.2006 (1569 days) shall be treated as "on duty" for all purposes and directed the respondents to extend all monetary benefits including increments and revision of pay and pension by treating the above period as duty and pay arrears to the petitioner within a period of four (4) months from the date of receipt of copy of this order.

13. In view of the said order, the Executive Board filed IA No.1 of 2026 seeking to recall the order dated 10.11.2023 in WP No.21197 of 2019. The learned Single Judge on considering the material on record, dismissed the said IA.

14. Aggrieved by the order in IA No.1 of 2026, the instant Writ Appeal is filed by the appellant seeking to allow IA No.1 of 2026 in WP No.21197 of 2019 contending that the writ petitioner played fraud by not disclosing the fact that he had

filed WP No.42430 of 2016, which was dismissed as withdrawn on 27.11.2018 and this fact was not brought to the notice of the Court while obtaining the order dated 10.11.2023 in WP No.21197 of 2019 and on the said ground, the said recall petition ought to have allowed.

15. The appellants also averred that the learned Single Judge did not see that as per the directions of this Court in WP No.464 of 2003, the Executive Board considered the submissions of the writ petitioner in the appeal and rejected the same. The appellants have also contended that the writ petitioner approached the local MLA, who wrote a letter to Special Chief Secretary to the Government to look into the matter and acting upon the said letter of MLA, the Special Chief Secretary to the Government, through his letter dated 23.01.2017 requested the Director NIMS to furnish report pertaining to the writ petitioner.

16. The appellants further contended that the learned Single Judge failed to see that the writ petitioner did not challenge the substantive punishment order dated 12.06.2002 and dies non order dated 16.05.2008 in the earlier writ petitions filed

by him and the writ petitioner now cannot challenge the same after a lapse of seventeen (17) years.

17. The learned counsel for the petitioner has relied upon the following judgments and the relevant paragraphs of the judgments are extracted:

i. In ***Vipin Kumar v. Jaydeep and others***[1]

> *21. This appeal arises out of the order dated 5-1-2021 [Jaydeep v. Indian Oil Corpn. Ltd., 2021 SCC OnLine Utt 1921] wherein an application seeking recall of the order passed in the review petition dated 11-10-2019 [Jaydeep v. Indian Oil Corpn. Ltd., SA No. 140 of 2016, order dated 11-10-2019 (Utt)] and consequently, the judgment dated 1-7-2019 [Jaydeep v. Indian Oil Corpn. Ltd., 2019 SCC OnLine Utt 1901] was sustained. This was on the premise that a second review petition is barred under Order 47 Rule 9 of the Code.*

From the above judgment, it is held that once it is established that order was obtained by a successful party by practicing or playing fraud, it is vitiated and such order cannot be held legal, valid or in consonance with law. It is non-existent and non-est and cannot be allowed to stand.

ii. In ***S.P. Chengalvaraya Naidu (dead) by Lrs. v. Jagannath (Dead) by Lrs. and others***[2]

[1] 2025 (6) SCC 465

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court

[2] 1994 (1) SCC 1

that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

iii. In ***A.V. Papayyasastry and others v. Government of A.P. and others***[3]

21. *Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:*
"Fraud avoids all judicial acts, ecclesiastical or temporal."
22. *It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.*
33. *Allowing the appeal and setting aside the orders, this Court stated: (SCC pp. 587-88, paras 15-17)*
"15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be

[3] 2007 (4) SCC 221

condoned, would be limited to the issues formulated from the pleadings made till then.
16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

17. The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a serious miscarriage of justice."

iv. In ***Yashoda (alias Sodhan) v. Sukhwinder Singh and others***[4]

24. What would be the effect of suppression of earlier proceedings has been considered by this Court in S.P. Chengalvaraya Naidu [S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1] . The Court observed thus : (SCC p. 5, paras 5-6)
"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however,

[4] 2002 (17) SCC 307

went haywire and made observations which are wholly perverse. We do not agree with the High Court that 'there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence'. The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ext. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ext. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the

> *other side then he would be guilty of playing fraud on the court as well as on the opposite party."*

In the aforesaid judgments, wherein it is held that the judgment or decree obtained by fraud to be treated as nullity and can be questioned even in collateral proceedings and the meaning of 'fraud' is defined.

v. In ***State of Punjab and others v. Krishnan Niwas***[5]

> *3. The admitted facts are that the respondent was charged for an offence under Section 302 IPC. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 IPC was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated 1-3-1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back wages. The respondent accepted it and joined duty on 5-6-1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The trial court dismissed the suit. On appeal, the Additional District Judge reversed the judgment of the trial court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.*

[5] 1997 (9) SCC 31

4. The learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on 5-6-1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil court would not have gone into the merits and decided the matter against the appellants.

vi. In ***Sanat Kumar Dwivedi v. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and others***[6]

2. The admitted facts are that the appellant was reinstated in service by order dated 12-5-1978 with a condition that he will not get any back wages. Obviously, earlier on 8-3-1976 his services were terminated but by the aforesaid order, he was reinstated without back wages. He accepted such reinstatement without back wages by his joining report, Annexure R-4 at p. 106 of the paper-book that he has joined his duty on 13-5-1978. By his own conduct, the appellant has accepted the correctness of the order of reinstatement without back wages. Under these circumstances, subsequent dispute raised by him regarding back wages was clearly not maintainable as held by this Court in State of Punjab v. Krishan Niwas [(1997) 9 SCC 31 : 1997 SCC (L&S) 998 : (1997) 3 Scale 338] . In view of the settled legal position, no interference is called for. The appeal is therefore, dismissed.

vii. In ***Union of India and another v. N.M.Dhobi***[7]

[6] 2001 (9) SCC 402
[7] 2005 SCC OnLineGuj 342

15. In this background referred to above, Western Railways has finalized issue that applicant is not entitled for condonation of break in service due to resignations/removals and dismissals as a matter of policy. Applicant has made misrepresentation to the Western Railways that he was a member of S.C. community on two occasions. Those allegations were found to be proved and removal order was passed by Disciplinary Authority after holding departmental inquiry against applicant. In such serious misconduct, punishment of removal is considered to be a proper and legal punishment, decided by the Apex Court and High Court in number of cases [See: Kendriya Vidyalaya Sangathan v. Ram Rattan Yadav, 2003 AIR SCW 1126 : [2003 (2) SLR 602 (SC)]; R. Vishwanatha Pillai v. State of Kerala, 2004 Lab. IC 556; Ravindra Ramjorbhai Oza v. Western Railway, 2005 (1) GLH 721. Question raised before us is, whether applicant is entitled for condonation of break in service for period prior to date of his reappointment. Facts are to the effect that order of removal was not challenged by applicant before Tribunal. The Tribunal has not set aside order of removal and order of reappointment. Order of reappointment. Order of reappointment as a fresh entrant dated 13-4-1978 was also not challenged by applicant but said order was accepted by applicant and he resumed duties with effect from 18th April, 1978. We have perused Original service sheet in which "S.C." is written below the name of the applicant and service-sheet bear signatures of the applicant. Railway Service (Disciplinary and Appeal) Rules, 1968, Rule 25 Part VI is relating to revision and review. The authority under Rule 25 can confirm, modify or set aside order or confirm, reduce, enhance or set aside penalty imposed by order or impose any penalty where no penalty has been imposed or remit case to the authority which made order or any other authority directing such authority to make such Fresh inquiry as it may consider proper in the circumstances of the case or pass such orders as it may deem fit. Therefore, revisional and reviewing authority has power to pass such orders as it may deem fit, therefore, contention raised by learned Advocate Mr. Shah that reappointment is not prescribed as punishment under Rules, therefore, order of reappointment is bad, cannot be accepted in

light of provisions of Rule 25 of said Rules of 1968 which provides that revisional authority and reviewing authority has power to pass such orders as it may deem fit. Revisional and reviewing authority has not set aside order of removal, but with sympathetic approach, granted only reappointment as a fresh entrant. Said order has been accepted by the applicant and requested the authority to condone break in service. Representation dated 17th July, 1989 after rejection of representation dated 11th November, 1982 by order dated 14th March, 1984 suggests that applicant has accepted order of reappointment and then made request to the General Manager, Western Railways to condone break in service. In such circumstances, when order of reappointment is accepted which does not include benefit of continuity of service impliedly or expressly, therefore, applicant is not entitled for condonation of break in service. Applicant is not having any legal right to receive benefit of continuity of service. It is not impliedly included in case of reappointment. In case of reappointment, employee would lose his past service for all purposes. Order of reappointment is not punishment but result of sympathetic approach made by concerned authority. Tribunal has not given any reason on what basis, it has granted benefit of continuity of service or condonation of break for purpose of pension and other retirement benefits. Reliance placed by the Tribunal on decision of Apex Court in case of U.P. Awas Evam Vikas Pari shad v. Rajendra Bahadur Srivastava (supra) is misconception. The facts before the Apex Court in UP. Awas Evam Vikas Parishad v. Rajendra Bahadur Srivastava (supra), are totally different. In aforesaid case, order of termination was set aside. High Court, while allowing writ petition by order dated 17th July, 1993 set aside the order of termination dated December 31, 1971 and directed for benefits of his past service including the benefit of seniority, increment and promotion as if his service has not been terminated. This order of the High Court was set aside by Apex Court by declaring it as illegal but Apex Court held that employee is entitled to computation of period from the date of his initial entry for purpose of pensionary benefits only and to no other relief. This being mere order passed by Apex Court, no ratio has been laid

down by Apex Court. In such case, when reappointment order is passed and accepted by employee, then he is legally not entitled for benefit of continuity in service or condonation of break in service as a matter of right. Therefore, in the circumstances of this case, this judgment is not helpful to applicant. In Keshav Samsher Singh v. Union of India (supra) also, facts are totally different. Central Administrative Tribunal Bombay set aside termination order and granted benefit of continuity of service whereas in order of removal remains as it is and reappointment order has been accepted by applicant and did not challenge the same before any forum. Not only that, Tribunal has not set aside order of removal and reappointment. Therefore, Tribunal has not properly applied mind and direction issued by Apex Court in V.P. Awas Evam Vikas Parishad v. Rajendra Bahadur Srivastava (supra) has been blindly applied to facts of this case and granted benefit of condonation of break with pensionary and retirement benefit. Decision of the C.A.T. Bombay in Keshav Samsher Singh v. Union of India (supra) is also not applicable to facts of this case. In present case, no penalty has been imposed by revisional authority while granting reappointment to applicant. Revisional/reviewing authority has exercised power under Rule 25 enabling it to pass appropriate order it may deem proper. So, it is not a case of setting aside order of removal or imposition of any other penalty to applicant. Learned Advocate Mr. K.K. Shah has relied upon Apex Court decision is S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : AIR 1990 SC 10 : [1989 (5) SLR 779 (SC)] to point out that in service dispute, cause of action would arise from date of order of higher authority and not from date of adverse order, and where no order is made by higher authority within six months from date of remedy is availed, the date on which six months time expired. This decision is not applicable to facts of this case because, lastly, on 14-3-1984, representation of the applicant dated 11th November, 1982 was decided against applicant, thereafter, applicant remained silent upto 17th July, 1989. In between, no challenge by applicant either to adverse order or no proceeding is filed by applicant within period of six months. However, apart from that, we are not examining the question of delay in filing of

O.A. before Tribunal but we are examining merits of the matter, whether applicant is entitled to benefit of condonation of break in service or not?
Tribunal has not discussed on what basis applicant is entitled for said benefit. No reasons have been recorded by Tribunal. Tribunal granted benefits in favour of the applicant by merely relying upon decision of Apex Court in UP. Awas Evam Vikas Parishad v. Rajendra Bahadur Srivastava (supra). The order of C.A.T. is not legal but based on sympathy and sentiment. According to us, this is nothing but clear case of non-application of mind by Tribunal. In case of reappointment which does not include continuity of service, benefit of past service cannot be granted by condoning break when order of reappointment has been accepted by applicant-employee. Once order of reappointment has been accepted by applicant and resumed duties without any protest and enjoyed benefits flowing from said order, then, applicant is estopped from claiming benefit of past service and other consequential benefits. Apex Court has examined the issue that once reinstatement order passed by Labour Court denying back wages for intervening period and then employer ordered for reinstatement and accepted by the employee, then, subsequent challenge against denial of back wages by filing of petition is not maintainable and it was not entertained by Apex Court on ground that the reinstatement without back wages has been accepted by employee, then, to challenge back wages part, subsequently, is not maintainable. (See: Sanat Kumar Dwivedi v. Dhar Jilla Sahakari Bhoomi Vikas Bank Marayadit, (2001) 9 SCC 402 : [2000 (5) SLR 417 (SC)]; State of Punjab v. Krishan Niwas, (1997) 9 SCC 31 : 1997 SCC (L&S) 998 : 1997 (3) Scale 338) : [1997 (2) SLR 514 (SC)].

viii. In ***Maharashtra State Road Transport Corporation Bombay v. Prakash Tulshiram Pardeshi***[8]

[8] 2008 (4) Mh.L.J. 940

4. The charges against the respondent were of a serious nature and character. A disciplinary enquiry was convened to enquire into the allegation that the respondent while discharging his duties as conductor had collected the fare from two passengers on the bus, but to whom tickets had not been issued. The money bag of the respondent also showed an excess fare collection. The charge against the respondent was, therefore, that he had misappropriated the funds of the Corporation and had been guilty of a dereliction of duties by not issuing tickets to passengers for the journey. Such an act of misconduct having been found to be duly established, had to be taken seriously both by the disciplinary authority and by the Labour Court. Upon holding the charge to be established, the respondent was dismissed from service. The first Appellate Authority, as a matter of fact, came to the conclusion that the charge was established, that it was of a serious nature and that the service record of the respondent was not satisfactory and he was penalised in the past under the service rules. The final order of the Appellate Authority clearly suggests that the Appellate Authority was inclined to dismiss the appellant from service. However, it was the respondent who had stated that he would not commit such a mistake in the future and it was on his request that the Appellate Authority eventually decided to make a fresh offer of appointment so as to enable the respondent to have some opportunity to improve upon himself. The respondent accepted the order of the Appellate Authority and joined service with effect from 10th December, 1994. Once that was done and having taken the benefit of the order, it was clearly not open to the respondent to turn back and complain of an unfair labour practice. The respondent is clearly estopped from doing so. The principle of estoppel must apply in such a case and the Labour Court ought to have rejected the complaint on this ground alone. Counsel appearing on behalf of the petitioner urged that the powers of the Appellate Authority are wide enough to include an offer of the fresh appointment to the workman. For the purposes of these proceedings, it is not necessary for this Court to enter any final judgment on whether the Appellate Authority in the course of modifying the order of dismissal can pass an order of fresh

appointment. But in the facts of the present case, it needs emphasis that the order of the Appellate Authority properly construed, was an offer for a fresh appointment which was duly accepted by the respondent. If the respondent believed that the Appellate Authority had no authority to impose such a direction upon him, he could have challenged the order in its entirety. Having taken the benefit of the order, the respondent was estopped from challenging the order by which he was given fresh appointment. The Appellate Authority while justifying its own finding, confirmed the order of dismissal. The respondent was, however, offered re-employment on humanitarian grounds, particularly in the light of the fact that he accepted his mistake and stated that he would not commit such a mistake in future. The interference of the Labour Court in the proceedings, was therefore, clearly not warranted. The principle that estoppel must apply in a situation such as this is consistent with the judgment of the Supreme Court in The State of Punjab v. Krishan Niwas, 1997 (1) CLR 855. The same view has been taken by the Division Bench of the Gujarat High Court in Union of India v. N.M. Dhobi, 2006 (1) CLR 587.

ix. In ***Maharashtra State Road Transport Corporation, through the Divisional Controller, Chandrapur Division, Chandrapur v. Kawdu***[9]

2. Shri Mehadia, the learned counsel appearing for the petitioner has invited my attention to plea raised in para 5 of the written statement to the effect that once the complainant accepts the order of the First Appellate Authority and joins the services, he is estopped from questioning the said order. He has relied upon the decision of the learned Single Judge of this Court in the case of Maharashtra State Road Transport Corporation, Bombay v. Prakash Tulshiram Pardeshi reported in 2008 (4) Mh.L.J. 940 and the decision of the Apex Court in the case of State of Punjab v. Krishan Niwas reported in (1997) 9 SCC 31. He submits that the

[9] 2014 SCC OnLineBom 3534

> *complainant joined the duties as per the decision of the First Appellate Authority on 13.10.2000 and was getting Rs. 2310/- per month as a basic pay.*

From the above judgments, wherein it is held that an employee after accepting the punishment and joining duty is stopped from challenging the punishment and the acceptance of order reinstating services without back wages and in view of the order of subsequent claim for back wages was not maintainable.

x. In ***R.N. Gosain v. YashpalDhir***[10]

> *10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See : Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd. [(1921) 2 KB 608, 612 (CA)] , Scrutton, L.J.] According to Halsbury's Laws of England, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508)*
> *11. In Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker [1989 Supp (2) SCC 655] this Court was dealing with a similar situation. The High Court, while deciding the second appeal in an eviction matter gave the appellant (tenant) one year's time subject to his giving an undertaking within a period of three*

[10] (1992) 4 SCC 683

weeks stating that vacant possession would be handed over within the aforesaid time. The appellant gave an undertaking in accordance with the said terms wherein he undertook that he would vacate and give vacant possession of the suit premises by December 31, 1985, i.e., to say after one year if "by that time no stay order from the Supreme Court is received as I intend to file an appeal in the Supreme Court". It was held that in view of the said undertaking the petitioner could not invoke the jurisdiction of this Court under Article 136 of the Constitution and he should abide by the terms of the undertaking, and it was observed: (pp. 655-56)

"This undertaking filed by the appellant in our opinion is in clear variation with the oral undertaking given to the learned Judge which induced him to give one year's time. We do not wish to encourage this kind of practice for obtaining time from the court on one plea of filing the undertaking and taking the different stand, in applications under Article 136 of the Constitution."

xi. In ***Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited and another***[11]

15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao [AIR 1956 SC

[11] (2013) 5 SCC 470

593] , CIT v. V. MR. P. Firm Muar [AIR 1965 SC 1216] , Ramesh Chandra Sankla v. Vikram Cement [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713] , Pradeep Oil Corpn. v. MCD [(2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712 : AIR 2011 SC 1869] , Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. [(2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and V. Chandrasekaran v. Administrative Officer [(2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : JT (2012) 9 SC 260] .]

This extract is taken from Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153 : 2013 SCC OnLine SC 143 at page 481

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.

xii. In ***State of Uttar Pradesh v. Karunesh Kumar and others***[12]

In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in Union of India v. N. Murugesan, (2022) 2 SCC 25:
"Approbate and reprobate

[12] (2022) SCC OnLine SC 1706

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

27.2. State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar [AIR 1965 SC 1216].)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329].) In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] this Court has observed as under : (R.N. Gosain case [(1992) 4 SCC 683], SCC pp. 687-88, para 10)

'10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a

> *transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.'*
> *25. The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.*
> *26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."*

In the aforesaid judgments, it is held that law does not permit a person to both approbate and reprobate and this principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round

and say it is void for the purpose of securing some other advantage."

18. The learned counsel for the respondents has relied upon the judgment in ***Chief Commissioner, Land Administration, Government of Telangana, Hyderabad and others v. P. Govind Reddy and others***[13], the relevant paragraph is extracted below:

> *39. There is no dispute to the proposition that fraud vitiates all proceedings, judicial as well as administrative, and when it is a case of fraud, limitation cannot be put up as a defence. Nonetheless, Supreme Court has time and again a note of caution that merely allegation of fraud of suspicion is not enough. Fraud must not only be pleaded must also be demonstrated and established. Mere raising of suspension would not be adequate to draw any conclusion of fraud. As director (Appeals) has pointed out in his letter dated 09.04.2008 that District Collector and Joint Collector have only created suspicion to justify the request for initiating proceedings for cancellation of supplementary sethwar. This is not adequate more so, when several decades have gone by since the initial assignments which have not been cancelled; subsequent sale transactions of the vendors have also not been cancelled; it is a supplementary sethwar of the writ petitioners which has been targeted.*

19. Having heard the contentions and rival contention of both the counsel and on consideration of entire material on record, it is pertinent to note that the order of reinstatement itself

[13] 2022 (5) ALT 498 (DB)

indicates that the period from the date of compulsory retirement until the date of reinstatement was treated as a substantive punishment. Having accepted the said punishment, the petitioner cannot now contend that he was compelled to accept the same owing to his financial constraints. The petitioner had availed himself of the appellate remedy and had also approached this Court by filing a writ petition seeking relief in that regard. Subsequently, withdrawn the writ petition without obtaining liberty to institute fresh proceedings and having accepted the punishment imposed by the Executive Board, the petitioner cannot be permitted to re-agitate the same issues by raising pleas that were available to him earlier.

20. It is further pertinent to note that the petitioner had already challenged the proceedings treating the intervening period as *dies non* in an earlier writ petition, which was subsequently withdrawn. Thereafter, the petitioner filed the present proceedings seeking substantially the same relief i.e., to set aside the proceedings of the Executive Registrar treating the said period as *dies non* and to direct that the

period be treated as duty. The earlier filing and withdrawal of the writ petition, particularly when the subsequent proceedings were filed without disclosing the said fact, constitute a relevant circumstance for consideration. However, the petitioner seeks to rely upon the alleged suppression of material facts and the fraud said to have been played upon the Court as grounds for recalling the order passed in Writ Petition No. 21197 of 2018.

21. It is also pertinent to note that the petitioner had preferred a writ appeal against the order passed in Writ Petition No.21197 of 2018. The said writ appeal was subsequently withdrawn with liberty to file a review application against the order passed by the learned Single Judge. Although the petitioner thereafter filed a review application, the ground of fraud now sought to be urged was not raised therein. Though an application for review and an application for recall would more or less stand on the same footing, rest on overlapping considerations, the petitioner cannot be permitted to pursue successive proceedings by raising grounds that were already available when the earlier proceedings were filed.

22. The alleged fraud and suppression now relied upon by the petitioner were matters that could have been raised in the writ petition itself. However, the petitioner failed to raise the said grounds in the review proceedings. The order passed in the review application was not further challenged and has therefore, attained finality. Having allowed the said order to attain finality, the petitioner cannot now seek to reopen the matter by filing an application for recall on grounds that were available to him at the relevant time but were not urged in the review proceedings.

23. We have perused the order passed by the learned Single Judge in the application seeking recall, as well as the grounds urged before this Court in the present writ appeal. On consideration of the reasons assigned in the application for recall and the contentions made in the present appeal, we are of the considered opinion that the learned Single Judge has passed the impugned order after duly considering the material available on record and we find no ground warranting interference with the order passed by the learned Single Judge.

24. Accordingly, the writ appeal is dismissed confirming the order dated 24.04.2026 in IA No.1 of 2026 in WP No.21197 of 2019 passed by the learned+ Single Judge. There shall be no order as to costs.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

_____

P. SAM KOSHY, HACJ

_____

NARSING RAO NANDIKONDA, J

Date: 05.11.2026.
vjb