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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.561 of 2024
CNR No.ODHC010019002024

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

* * *

Bhagaban Mahapatra
Aged about 65 years
Son of Late Bidyarath Mahapatra
At: Dharampur, P.O.: Raj Berhampur
District: Baleshwar
At present
Retired Assistant Block Education Officer
Khunta, At/P.O.: Khunta
District: Mayurbhanj. ... Petitioner

-VERSUS-

- 1.** State of Odisha
Represented through
Secretary to Government
School and Mass Education Department
Odisha, Bhubaneswar.
- 2.** Director
Elementary Education
Odisha, Bhubaneswar.
- 3.** Block Education Officer
Khunta, At/P.O.: Khunta
District: Mayurbhanj. ... Opposite parties.

Counsel appeared for the parties:



For the Petitioner : M/s. Rama Krishna Bisoi,
Ajit Kumar Samantaray,
Pravat Kumar Dash and
Aruna Mishra, Advocates

For the Opposite parties : Mr. Jayant Kumar Bal,
Additional Government Advocate

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 10.09.2026 :: Date of Judgment : 16.09.2026

JUDGMENT

The petitioner, retired as Assistant Block Education Officer being promoted from the post of Headmaster, filed this writ petition under the provisions of Article 226 of the Constitution of India beseeching grant of following relief(s):

*“In view of the aforesaid facts and circumstances as narrated above, it is ardently prayed that this Hon’ble Court graciously be pleased to **quash the Order under Annexure-3** and direct the opposite party No.2 to sanction and **disburse of duty pay salary of the petitioner** with effect from 01.01.2016 to 17.03.2016 by regularising the leave period within a time stipulation as fixed by this Hon’ble Court;*

And issue any other appropriate writ/writs, order/orders or direction/directions as deemed fit and proper in the fitness of the case;



And for this act of kindness as in duty bound the petitioner shall ever pray.”

Facts:

2. The petitioner, appointed as Headmaster on 09.09.1981, after B.S. Madhusudan Middle English School being taken over by the Government in the year 1991, got promotion in the year 2013 to the rank of Level-II in the Elementary Cadre Service. While serving as Assistant Block Education Officer in the said Cadre, though he submitted application to remain on leave from 20.01.2016 to 14.02.2016, he was not disbursed the salary from 01.01.2016 to 17.03.2016. Nevertheless, he got retired from service on attaining the age of superannuation on 31.05.2018.

2.1. On many occasions he approached the authorities for regularisation of leave, but to no avail. A representation dated 29.03.2022 submitted to the Director, Elementary Education, Odisha being not attended to, an application under Articles 226 and 227 of the Constitution registered as W.P.(C) No.28842 of 2022 was filed. The said writ petition stood disposed of on 03.11.2022 by this Court with the following observation:

“As agreed to by learned counsel for the parties, however, without expressing any opinion on the merits of the case, this writ petition stands disposed of directing the opposite party No.2 to consider the representation filed by the



petitioner vide Annexure 1, and pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of this order.”

2.2. The Director, Elementary Education, Odisha, Bhubaneswar rejected the representation dated 29.03.2022 by Office Order No.11700— 6S-6-2022-VI, dated 16.05.2023 (Annexure-3) on the ground that the criminal proceeding and the departmental proceeding being pending, he is disentitled to be released with duty pay salary on account leave from 01.01.2016 to 17.03.2016.

2.3. The instant writ petition has been filed questioning propriety and legality of such rejection.

Counter affidavit filed by the opposite party No.3:

3. A Letter No.Exam-IV(PC)/Vol(10)/5287/16, dated 08.03.2016 is found enclosed with the counter affidavit, wherefrom it is luculent that with respect to the educational credentials of the B.A. Degree (April, 1981) and B.Ed. Degree (May, 1985), the Controller of Examinations, Utkal University, Vani Vihar, Bhubaneswar, confirmed that in connection with the B.A. Examination of April, 1981, no such roll number was allotted, nor did the tabulation register disclose any such fact. Furthermore, so far as the B.Ed. qualification is concerned, no such roll number existed in the



tabulation register, nor was the certificate ever issued by the University. Consequent upon the initiation of the criminal case, the petitioner was arrested and subsequently released on bail. Before retirement, a departmental proceeding was also initiated. Since the petitioner remained on unauthorised leave from 01.01.2016 to 17.03.2016, he is rightly denied the benefit claimed.

Hearing:

- 4.** On the consent of counsel appearing for both the sides, the matter was taken up for final hearing.
- 4.1.** Having heard Sri Rama Krishna Bisoi, learned Advocate for the petitioner; and Sri Jayant Kumar Bal, learned Additional Government Advocate, and after conclusion of the hearing, the matter is kept reserved for preparation and delivery of Judgment/order.

Rival contentions and submissions:

- 5.** Sri Rama Krishna Bisoi, learned Advocate stating that the representation dated 29.03.2022 of the petitioner at Annxure-1 has not been taken into consideration in its right earnest. By taking into account extraneous factors not germane for consideration of the issue of regularising unauthorised leave during the period from 01.01.2016 to 17.03.2016, the Director, Elementary



Education failed to exercise his discretion to grant duty pay salary.

5.1. Arduous submission is made by Sri Rama Krishna Bisoi, learned Advocate that the reference to Rule 66 of the Odisha Civil Services (Pension) Rules, 1992, to deny benefit of regularisation of leave for the period in question is uncalled for. Expanding his argument further, it is submitted that mere pendency of the criminal case and the departmental proceeding on the self-same charges should not have deterred the authority concerned to decide entitlement of the petitioner for regularisation of period of leave from 01.01.2016 to 17.03.2016 and disburse salary for the said period. As there is no legal impediment to grant such a relief prayed for by the petitioner, the Director, Elementary Education fell in gross error of law as well as fact by rejecting the representation of the petitioner.

6. Sri Jayant Kumar Bal, learned Additional Government Advocate referring to detail of facts found mentioned in the Office Order dated 16.05.2023 of the Director, Elementary Education and the material provided in the counter affidavit, submitted that the regularization of the unauthorized leave from 01.01.2016, to 17.03.2016, can be considered once the criminal trial and the departmental proceeding clear the allegations regarding the fake certificates relating to credentials of B.A. and



B.Ed. qualifications. In view of factual position contained in the Letter dated 08.03.2016 issued by the Utkal University, unless the petitioner is absolved of the serious allegations levelled against him, he is rightly refused “*duty pay salary from 01.01.2016 to 17.03.2016*”. Since he availed leave and/or remained absent from duty without any sanction and the departmental proceeding was in progress in connection with securing the employment by producing fake educational qualification certificates he was placed under suspension *vide* Office Order No.5525— 4A-189-15-VI, dated 18.03.2016.

6.1. It is vociferously urged by Sri Jayant Kumar Bal, learned Additional Government Advocate that due to non-cooperation and non-participation of the petitioner the criminal case and the departmental proceeding could not proceed. He went on to submit that as this Court granted interim protection in a writ petition by directing not to finalise the departmental proceeding till the criminal case is culminated, the departmental proceeding could not reach at the conclusion despite the fact that the Utkal University has refused to have issued such certificate declaring the petitioner qualified in B.A. and B.Ed.

6.2. He laid emphasis on the factual observation made in the impugned Order of the Director, Elementary Education



that though by Letter dated 18.03.2016 in Annexure-B/3 enclosed with the counter affidavit the petitioner was placed under suspension and, instead of furnishing reply to the authority concerned in connection with Notice dated 23.02.2018, he having approached the learned Odisha Administrative Tribunal in O.A. No.492 of 2018, the matter remained in suspended animation since 21.03.2018. As the petitioner got retired with effect from 31.05.2018, the interim order dated 21.03.2018 got vacated and the departmental proceeding continued by dint of Rule 7 of the Odisha Civil Services (Pension) Rules, 1992. However, the notice issued thereunder suffered jolt by order of this Court as the departmental proceeding is directed to be finalised after final determination by the criminal Court. Under the above premise, it is strenuously urged that the writ petition does not deserve consideration on merit.

Conclusion and decision:

7. Reading of paragraph 6 of the writ petition reveals that the petitioner remained absent from 20.01.2016 to 14.02.2016 by submitting application for grant of leave to the competent authority by enclosing medical report. Nonetheless, no material is placed in the writ petition to substantiate such averment; therefore, this Court does not find reason to appreciate such a fact as the Office Order dated 16.05.2023 does not transpire that the



Director, Elementary Education had the occasion to verify the veracity of such a contention. Sri Rama Krishna Bisoi, learned Advocate was candid in his submission that neither copy of application for leave is enclosed with the writ petition nor is the medical report as the same is not available with the petitioner. It is unfathomable to accept such a stand as the said application and the medical report are the foundation for consideration of factum of entitlement for leave. It is not the case of the petitioner that he remained on leave for the period specified above upon being granted the same by the competent authority.

7.1. In this regard it is felt apposite to have regard to the following view expressed by the Hon'ble Supreme Court of India in the case of *Badami Vrs. Bhali*, (2012) 6 SCR 75:

“19. Presently, we shall refer as to how this Court has dealt with concept of fraud. In S. B. Noronah Vrs. Prem Kumari Khanna, AIR 1980 SC 193 while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, ‘a judgment obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity’. (See Halsbury’s Laws of England, Vol. 16 Fourth Edition para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion,



cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

20. In *S. P. Chengalvaraya Naidu (dead) by L.Rs. Vrs. Jagannath (dead) by L.Rs. and others*, AIR 1994 SC 853 this court commenced the verdict with the following words:

‘Fraud-avoids all judicial acts, ecclesiastical or temporal’ observed Chief Justice Edward Coke of England about three centuries ago. **It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law.** Such a judgment/decre— by the first court or by the highest court— has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.’

21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. **A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.**

22. In *Smt. Shrist Dhawan Vrs. Mis. Shaw Brothers*, AIR 1992 SC 1555 it has been opined that fraud and



collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen Vrs. Preeti Lal, AIR 2002 SC 33, Ram Preeti Yadav Vrs. U.P. Board of High School and Intermediate Education and other, (2003) 8 SC 311 and Ram Chandra Singh Vrs. Savitri Devi and others, (2003) 8 SCC 319.

23. *In State of Andhra Pradesh and another Vrs. T. Suryachandra Rao, AIR 2005 SC 3110 after referring to the earlier decision this court observed as follows:*

*‘In Lazaurs Estate Ltd. Vrs. Beasley, (1956) 1 QB 702 Lord Denning observed at pages 712 & 713, ‘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.**’ In the same judgment Lord Parker LJ observed that **fraud vitiates all transactions known to the law of however high a degree of solemnity.**’*

24. *Yet in another decision Hamza Haji Vrs. State of Kerala & Anr., AIR 2006 SC 3028 it has been held that **no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud.** The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.*



25. *** There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27.11.1973 did not look at these aspects. When the second suit was filed in 1984 for title and the third suit was filed for possession thereafter, the courts below had routinely followed the principles relating to consent decree and did not dwell deep to find out how the fraud was manifestly writ large. It was too obvious to ignore. The courts below have gone by the concept that there was no adequate material to establish that there was fraud, though it was telltale. That apart the foundation was the family arrangement. We have already held that it was not bona fide, but, unfortunately the courts below as well as the High Court have held that it is a common phenomenon that the people in certain areas give their property to their close relations. We have already indicated that by giving the entire property and putting him in possession she would have been absolutely landless and would have been in penury. It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken



over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death. All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:

*‘Fraud generally lights a candle for justice to get a look at it; and rogue’s pen indites the warrant for his own arrest.’ ***”*

7.2. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. In exercising jurisdiction under Article 226 of the Constitution of India, the conduct of the party who is invoking such jurisdiction is significant. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the



material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.¹

7.3. Noteworthy here to have reference to Chapter-XV of the Rules of the High Court of Orissa, 1948, dealing with “Applications under Article 226, 227 and 228 of the Constitution and Rules for the issue of writs under the said Articles (except writs in the nature of Habeas Corpus)”, the relevant provision of which reads thus:

- “3. (1) *The applications shall be accompanied by a statement setting out the name and description of the applicant and of the party against whom relief is sought and the particulars of the proceeding/proceedings which is/are sought to be challenged or quashed, and the grounds on which it is sought. The same shall also contain the provisions of law under which it is filed, the reliefs sought and the orders or actions impugned in the first few paragraphs. All such particulars as indicated in Appendix-I shall be duly and correctly furnished by the petitioner. In the application, the petitioner, after supplying the aforesaid information, shall also incorporate in a separate paragraph whether alternate remedy, if any, available under any statute has been availed or not.*
- (2) *The facts relied on in the application shall be verified by an affidavit.*

¹ *Manjula Vrs. D.A. Srinivas, (2026) 6 SCR 1.*



(3) *The application shall be accompanied by a certified copy or certified copies of the relevant order or orders. In case a certified copy of any order is not available in law and attested copy of such order may be filed.*

(4) ***The material documents referred to or relied upon in the application shall also be filed along with the application:***

Provided that the Court may, in its discretion, dispense with the production of the same.”

7.4. Having not furnished copy of document evincing that an application for leave was submitted to the competent authority or any application has been made to such authority for sanction and regularisation of leave stated to have been availed, this Court has no occasion to verify that the petitioner had ever sought permission to avail leave while discharging his duty. It is remained disputed as emerged from the pleadings that (paragraph 7 of the counter affidavit):

“The petitioner having known of his forged and fake B.Ed. certificate with an apprehension that FIR would be filed before Khunta Police Station for initiation of criminal proceedings and apprehending his arrest by the police he absconded himself without application/intimation to the competent authority from 01.01.2016 to 17.03.2016 and that is to say that he remained unauthorisedly absent in his duty for the said period.”



7.5. No rejoinder affidavit is forthcoming from the petitioner refuting such factual assertion made by the opposite party No.3. Thus, it is to be construed that the petitioner has not approached this Court with clean hands and clear heart. Necessary here to remind this Court about the observations made in *Kishore Samrite Vrs. State of U.P.*, (2012) 9 SCR 733 which are to the following effect:

*“This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. **We may recapitulate and state some of the principles.** It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:*

- (i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.*
- (ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.*



- (iii) *The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.*
- (iv) *Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.*
- (v) *A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.*
- (vi) *The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.*
- (vii) *Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.*
- (viii) *The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted 'visa'. Many societal pollutants create new problems of unredressed grievances and the Court should*



endure to take cases where the justice of the lis well-justifies it.

[Refer: Dalip Singh Vrs. State of UP. & Ors., (2010) 2 SCC 114; Amar Singh Vrs. Union of India & Ors., (2011) 7 SCC 69 and State of Uttaranchal Vrs Balwant Singh Chauhal & Ors., (2010) 3 SCC 402].

7.6. A conjoint reading of prayer in the writ petition and impugned Order of the Director, Elementary Education, it transpires that the petitioner sought for regularisation of leave from 01.01.2016 to 17.03.2016 and disbursement of “duty pay salary” for said period. On the contrary, in the representation dated 29.03.2022 (Annexure-1) it is apparent that the petitioner remained on leave from 20.01.2016 to 14.02.2016 and 11.03.2016 to 17.03.2016. To obviate such anomaly in course of hearing on a query, the learned counsel feigned that such application is not available. At paragraph 3 of the writ petition, the petitioner has asserted that the leave from 20.01.2016 to 14.02.2016 was availed on health issues. However, no iota of evidence is placed on record in this regard. Without such vital document(s) forming part of the writ petition, merely upon the self-serving assertion of the petitioner, this Court is afraid to extend the benefit sought for.

8. The events as they emerged from the Order dated 16.05.2023 of the Director, Elementary Education, demonstrate that to remove shroud of suspicion, the



Utkal University was instructed to supply information regarding the marks awarded and certificates issued in favour of the petitioner by a Letter dated 02.03.2016. The University on 08.03.2016 furnished adverse report against the petitioner. An FIR was stated to have been lodged on 10.03.2016, in pursuance of which the petitioner was arrested for alleged commission of offences under Sections 468, 471 and 420 of the Indian Penal Code, 1860. A criminal case arising out of said FIR being G.R. Case No.73 of 2016 has been registered and is now pending before the learned Sub-Divisional Judicial Magistrate, Udala.

- 8.1. The counsel for the petitioner could not throw light on the stage of such G.R. Case. *Per contra*, the learned Additional Government Advocate would submit that the petitioner approached the learned Odisha Administrative Tribunal by filing Original Application under Section 19 of the Administrative Tribunals Act, 1985, which was registered as O.A. No.31(B) of 2018, questioning propriety of continuance of the departmental proceeding and the criminal case simultaneously. However, after abolition of the Odisha Administrative Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E).], dated 2nd August, 2019), the said case having been transferred to



this Court, O.A. No.31(B) of 2018 was re-registered as WPC (OAB) No.31 of 2018. Said case was disposed of *vide* Order dated 09.09.2022 with the following observation:

- “3. The petitioner has filed this writ petition seeking to quash the second show cause notice under Annexure-9 dated 10.10.2018 and **further seeks for direction to the opposite parties to regularize the period of suspension of the petitioner as duty pay and also extend all such benefits within a stipulated time.**
4. Mr. R.K. Bisoi, learned Counsel appearing for the petitioner contended though a departmental proceeding was started against the petitioner, but for the self-same charges, a G.R. Case is also continuing bearing G.R Case No. 73 of 2016 before the learned SDJM, Udala. **That itself cannot be a ground not to conclude the proceeding departmentally which was initiated against him, depriving the petitioner to get the benefits as due and admissible in accordance with law.**
5. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State contended that since G.R. Case No. 73 of 2016 is pending before the learned SDJM, Udala, therefore, the departmental proceeding which was initiated against the Petitioner is being awaited for disposal of such criminal case and as such, **in the event the Petitioner is convicted in the criminal case, he may not get the benefit as claimed in the writ petition.**



6. *Having heard learned counsel for the parties and after going through the record, it appears that the petitioner has been visited with a departmental proceeding by framing the charge under Annexure-2. He has also been facing the criminal case bearing G.R. Case No. 73 of 2016, which pending before the learned SDJM, Udala. **In the counter affidavit it has been stated that since there is a financial loss to the Government, then a criminal prosecution will be of no help, as the remedy can be obtained only through a departmental proceeding or a civil suit.** In such a case it may be permissible to run the departmental proceeding concurrently with the criminal case provided that if there be any action, which may or is likely to cause embarrassment to the accused and tends to prejudice the fair and impartial trial of the criminal case the departmental proceeding will have to be stayed. As the GR Case is sub judice, the departmental proceeding will be finalized after final judgment of the Court.*
7. **Since the nature of proof in both the cases are totally different, in that case, the pendency of the criminal case cannot stand as a bar to conclude the departmental proceeding.** This Court in W.P.(C) No.35773 of 2021² disposed of on 22.11.2022 observed as follows:

‘Considering the submission that during pendency of the criminal trial, filing of defence by the petitioner in the disciplinary proceeding will jeopardize the

² Order dated 22.11.2022 in W.P.(C) No.35773 of 2021 has been passed by a learned Single Judge in *Shishir Kumar Das Vrs. State of Odisha*, W.P.(C) No.35773 of 2021. However, contra view is expressed by the Division Bench in the case of *Food Corporation of India Vrs. Kavi*, W.A. No.555 of 2026, decided on 10.09.2026, Neutral Citation: 2026:OHC:112-DB



prospect of the delinquent petitioner involving the criminal case, this Court finds support of the submission of learned counsel and also the support of decision of the Hon'ble apex Court reported in AIR 1999 SC 1416, decided taking support of the old decision of the Hon'ble apex Court reported in AIR 1965 SC 155. This Court accordingly disposes of the writ petition directing stay of the disciplinary proceeding vide C.P. H.Q Proceeding No. 02 of 2016 under Annexure-2 involving the petitioner till finalization of the Criminal Trial vide Bhubaneswar Vigilance P.S. Case No.06 of 2016 pending in the court of Special Judge, Vigilance, Bhubaneswar. This Court also directs the trial involving Bhubaneswar Vigilance Case No.06 of 2016 be expedited.'

8. ***In view of the above, this Court disposes of the writ petition directing for stay of the departmental proceeding initiated under Annexure-2 and second show cause notice under Annexure-9 dated 10.10.2018 till finalization of the criminal case initiated vide G.R. Case No. 73 of 2016, pending before the learned SDJM, Udala. This Court also directs that the G.R. case be expedited and finalized."***

8.2. A departmental proceeding was also initiated prior to retirement of the petitioner calling upon him to file statement of defence. Without responding to such notice, he approached the learned Odisha Administrative Tribunal in O.A. No.492 of 2018, wherein stay of departmental proceeding was granted on 21.03.2018 and the said restraint order could be vacated after the



petitioner got retired on 31.05.2018 from service on superannuation. The departmental proceeding being converted to a proceeding under Rule 7 of the Odisha Civil Services (Pension) Rules, 1992, further notice was issued on 10.10.2018. The petitioner challenged the said notice dated 10.10.2018 issued in connection thereof by way of writ petition, being W.P.(C) No.7640 of 2020, which was disposed of on 09.02.2024 with the following order:

“3. *Petitioner has filed the present Writ Petition inter alia with the following prayer:*

‘In view of the aforesaid facts and circumstances as narrated above, it is ardently prayed that this Hon’ble Court be graciously pleased to direct the opposite party No.3 to sanction and disburse the provisional pension of petitioner as per Rule 66 of Odisha Civil Services (Pension) Rules, 1992 w.e.f. 01.06.2018 onwards within a time stipulation as fixed by this Hon’ble Court.’

6. *Having heard learned counsel for the parties and considering the submissions made as well as the status of the proceeding in G.R. Case No.73 of 2016, this Court is of the view that **since the departmental proceeding has been stayed by this Court vide order dated 09.09.2022 and criminal proceeding has not yet been disposed of as on date**, this Court while disposing the writ petition directs learned S.D.J.M., Udala to take*



effective steps for disposal of G.R. Case No.73 of 2016 by the end of this year. Learned Addl. Govt. Advocate is directed to provide a copy of this order before the learned S.D.J.M., Udala for compliance.

6.1. *However, since petitioner has not yet been imposed with any punishment in either of the proceedings, taking into account the submissions made and the fact that the petitioner has retired since 31.05.2018, this Court directs opposite party No.1 to release the provisional pension as due and admissible in favour of the petitioner w.e.f. June, 2018. Such sanction will be made with consequential release of the benefits, within a period of 6 (six) weeks from the date of receipt of this order.*

7. *The writ petition is accordingly disposed of.”*

8.3. It is harped by the learned Additional Government Advocate forcefully that had the petitioner participated in the departmental proceeding, he could, by now, have been vindicated in the event his educational credentials were found to be genuine. Based on the ratio laid down in *Chairman and Managing Director, FCI Vrs. Jagdish Balaram Bahira, (2017) 11 SCR 271*, the learned Additional Government Advocate submitted that should the petitioner fail to establish the genuineness of his educational credentials in the departmental proceedings, the withdrawal of all benefits secured on the basis of such a false claim would be a natural legal consequence.



8.4. What is perceived from the above events is that on the one hand the departmental proceeding on the issue of fake certificates relating to qualifications in B.A. and B.Ed. has been stayed by this Court in a writ petition being filed at the behest of the petitioner and on the other hand it is not made known to this Court by the petitioner the occurrence of delay in proceeding with the G.R. Case No.73 of 2016. Verification of the writ petition it is observed that a certificate is appended to the following effect without mentioning earlier petitions filed by the petitioner:

“The matter out of which this present writ petition arises was never before this Hon’ble Court”.

Not a single word is whispered about the position with respect to the departmental proceeding and the criminal case in the instant writ petition. The learned Additional Government Advocate could bring on record such facts in course of hearing.

8.5. In *Kusa Duruka Vrs. State of Odisha, (2024) 1 SCR 601* it is observed as follows:

“6. In Moti Lal Songara Vrs. Prem Prakash @Pappu and another, (2013) 9 SCC 199, this Court, considering the issue regarding concealment of facts before the Court, observed that “court is not a laboratory where children come to play”, and opined as under:



‘19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim *supressio veri, expressio falsi*, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. **We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused- respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.**

20. The High Court, as we have seen, applied the principle “when infrastructure collapses, the superstructure is bound to collapse”. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.’



8. *In a recent matter, this Court again came across a litigant who had tried to overreach the Court by concealing material facts in Saumya Chaurasia Vrs. Directorate of Enforcement, (2023) 15 SCR 848. It was a case where the appellant before this Court had challenged the order passed by the High Court [High Court of Chhattisgarh at Bilaspur in Miscellaneous Crl. Case No.1258/2023] rejecting his bail application. He was accused of committing various crimes under the Indian Penal Code and the Prevention of Money Laundering Act, 2002. His bail application was rejected by the High Court on 23.06.2023. In the pleadings before this Court, it was mentioned that the High Court had committed gross error in not considering the chargesheet dated 08.06.2023 and the cognizance order dated 16.06.2023, which clearly suggested that there was error apparent on the fact of it. The fact which was available on record was that an order in the bail application was reserved by the High Court on 17.04.2023 and pronounced on 23.06.2023. Having some suspicion, this Court directed the appellant to file an affidavit to clarify the aforesaid position. There was no specific reply given to the aforesaid query to the Court. Rather vague statements were made. Considering the facts available, this Court observed that there was a bold attempt by and on behalf of the appellant therein to misrepresent the facts for challenging the order impugned therein, regarding the conduct of the parties and the counsel, this Court made the following observations:*



‘14. It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasized that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated Senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practicing in the High Courts and the District Courts. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients, however their duty to diligently verify the facts from the record of the case, using their legal acumen for which they are engaged, cannot be obliterated.’ ***”

8.6. With said note in mind, if the present matter is analysed it is discernible from the record that the petitioner has not even spelt out a single word about the stage of the departmental proceeding and the criminal case. It is not made known to this Court as to the stage of criminal case. Nothing is placed by the petitioner to show that even though by Order dated 09.09.2022 passed in WPC (OAB) No. 31 of 2018, this Court directed for stay of the departmental proceeding initiated and second show



cause notice dated 10.10.2018 till finalization of the criminal case initiated *vide* G.R. Case No. 73 of 2016 pending before the learned SDJM, Udala with further direction to expedite and finalize the G.R. case, it is unknown whether the petitioner cooperated with the criminal proceeding. It is not the case of the petitioner that for the laches on the part of the prosecution, the G.R. Case could not be ended till date.

8.7. With the serious allegation that by producing fake certificates (as the University has confirmed not to have issued such certificates) the petitioner got not only the job of the Headmaster of Middle English School, but also got promotion to the rank of the Assistant Block Education Officer. Moreover, by dint of interim protection granted in his favour, the petitioner could successfully complete his stint in a responsible post of Assistant Block Education Officer. At this juncture, as the criminal case has not been concluded, it is wholly premature to accede to the prayer of the petitioner for regularization of the leave period from 01.01.2016 to 17.03.2016, which the opposite parties claim to be unauthorized and without any application seeking permission.

8.8. In the context of use of fake certificate for securing employment and acquittal of such employee in the criminal case on account of benefit of doubt, the



following view has been expressed by the Hon'ble Supreme Court of India in the case of *Indian Oil Corporation Vrs. Rajendra D. Harmalkar*, (2022) 5 SCR 677:

“7.1. In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service.

7.2. It was a case on behalf of the petitioner— original writ petitioner before the High Court that he pleaded guilty and admitted³ that he had submitted a forged and fake certificate on the assurance that lesser punishment will be imposed. However, except the bald statement, there is no further evidence on the same. Nothing has been mentioned on record as to who gave him such an assurance.

³ In the present case, as is apparent from the document enclosed with the counter affidavit, the Utkal University has denied to have issued such certificate to the petitioner. Such fact is now to be factually established both in the criminal case as also the departmental proceeding. Not a single word is spelt out by the petitioner in the instant case disputing such letter of the Utkal University.



7.3. *Even otherwise the conduct on the part of the original writ petitioner is required to be considered. **As observed hereinabove, prior to the issuance of the chargesheet and after the complaint was received by the Vigilance Officer, there were repetitive requests and follow up by the authorities requesting the original writ petitioner to produce the original SSLC.** Initially the original writ petitioner did not even respond to the said requests. Thereafter, he came up with a case that the original SSLC was misplaced. He was then called upon to obtain a duplicate copy of the SSLC and to submit the same to the Manager, ER. However, he continued to evade obtaining the duplicate certificate from Karnataka Board. **Only thereafter the Manager, ER directly contacted the authorities of the Board and requested the Education Board to check up from their records and only thereafter it was revealed that the SSLC produced by the original petitioner was forged and fake and belonged to or related to some another student and it did not belong to the original writ petitioner.** This shows the mala fide intention on the part of the original writ petitioner.*

7.4. *Now, so far as the submission on behalf of the original writ petitioner that he was acquitted by the Criminal Court for the offences punishable under Sections 468 and 471 IPC in respect of the same certificate is concerned, the said contention is neither here nor there and is of no assistance to the original writ petitioner. **Apart from the fact that he was acquitted by the Criminal Court by giving benefit of doubt and there was no honourable***



acquittal, in the present case before the Disciplinary Authority the original writ petitioner as such admitted that he produced the fake and forged certificate. Therefore, once there was an admission on the part of the respondent— original writ petitioner, thereafter whether he has been acquitted by the Criminal Court is immaterial.

- 7.5. **Even from the impugned judgment and order passed by the High Court it does not appear that any specific reasoning was given by the High Court on how the punishment imposed by the Disciplinary Authority could be said to be shockingly disproportionate to the misconduct proved.** As per the settled position of law, unless and until it is found that the punishment imposed by the Disciplinary Authority is shockingly disproportionate and/or there is procedural irregularity in conducting the inquiry, the High Court would not be justified in interfering with the order of punishment imposed by the Disciplinary Authority which as such is a prerogative of the Disciplinary Authority as observed hereinabove.
- 7.6. From the impugned judgment and order passed by the High Court, it appears that the High Court has **denied the back wages** and other benefits and has ordered reinstatement on a concession given by the learned counsel on behalf of the original writ petitioner. However, it is required to be noted that for the period between 2006 to 2017 i.e. during the pendency of the writ petition the respondent was working in the Petroleum Division of Reliance Industries. **Therefore, he was aware that even**



otherwise he is not entitled to the back wages for the aforesaid period. Therefore, the concession given on behalf of the original writ petitioner as such cannot be said to be a real concession. In any case in the facts and circumstances of the case and for the reasons stated above and considering the charge and misconduct of producing the fake and false SSLC Certificate proved, when a conscious decision was taken by the Disciplinary Authority to dismiss him from service, the same could not have been interfered with by the High Court in exercise of powers under Article 226 of the Constitution of India. The High Court has exceeded in its jurisdiction in interfering with the order of punishment imposed by the Disciplinary Authority while exercising its powers under Article 226 of the Constitution of India.”

- 8.9. The reasoning of Director, Elementary Education in the impugned order does clearly reflect that the departmental proceeding being halted due to order of this Court, and the criminal case is in progress, in absence of outcome of such proceedings, the claim of the petitioner for disbursement of duty pay salary by regularising the period of leave from 01.01.2016 to 17.03.2016 does not deserve consideration. Taking cue from the above, since nothing is brought on record by way of rejoinder affidavit by the petitioner that the letter of Utkal University does not depict true and correct factual position, the claim of the petitioner in the present



writ petition cannot be granted. This Court does not find flaw in decision making process of the Director, Elementary Education, Odisha, Bhubaneswar.

9. On his own showing at paragraph 3 of the writ petition the petitioner has claimed to have availed leave from 20.01.2016 to 14.02.2016 (though it is in dispute that no application was submitted to the authority concerned), but he sought for disbursement of duty pay salary from 01.01.2016 to 17.03.2016. Adopting the petitioner's case strictly *arguendo* regarding the period from 20.01.2016 to 14.02.2016, there remains a conspicuous silence in the pleadings concerning the remaining periods. The petitioner has failed to show whether any leave was ever sought from 01.01.2016 to 19.01.2016 and from 15.02.2016 to 17.03.2016. The petitioner has not enclosed document showing he had made application to the proper officer at the right point of time and no document is cited to demonstrate that he had made any application before the competent authority for regularisation of leave, which is stated to be unauthorised. Calculated the leave from 01.01.2016 to 17.03.2016 would be more than two months. It was asserted by the petitioner that medical certificates indicating health issues were submitted before the authority; nonetheless, no copy of medical certificate or



the application for grant of leave has been made part of the instant writ petition.

9.1. As is manifest from Office Order dated 18.03.2016 issued by the Director, Elementary Education, Odisha, Bhubaneswar the petitioner was placed under suspension from that date pending initiation of disciplinary proceeding for producing fake provisional certificate. It is with vehemence, Sri Rama Krishna Bisoi, learned Advocate contended that the petitioner in the instant case is merely asking for regularising the period of leave prior to said date, *i.e.*, 18.03.2016. The material placed apparently shows that the petitioner remained absent from 01.01.2016 to 17.03.2016 (as no document could be furnished to suggest that the leave was availed being granted by competent authority). On and from 18.03.2016 he was suspended. In absence of any document showing medical exigency, this Court could not assess the nature of ill-health and ascertain the difficulty in seeking grant of leave during the period from 01.01.2016 to 17.03.2016.

9.2. In this respect a cue is taken from *Viveka Nand Sethi Vrs. Chairman, J&K, Bank Ltd.*, (2005) 3 SCR 1095. In the said reported case, it is posited as follows:

“* In the .instant case except for asking for grant of medical leave, he did not submit any explanation for his absence satisfying the management that he**



has not taken up any other employment or avocation and that he has no intention of not joining his duties. In the aforementioned fact situation we do not see any reason as to why the Bank could not arrive at a satisfaction that the workman had no intention to join his duties. It is interesting to note that though the said order was passed on 17.05.1984, a representation to the Bank was made by the workman to reconsider the said decision after a period of 3 years and 2 months by a Letter dated 31.07.1987.

Yet again a dispute was sought to be raised by issuance of a legal notice on the Bank only on 06.04.1989. **Mere sending of an application for grant of leave much after the period of leave was over as also the date of resuming duties cannot be said to be a bona fide act on the part of the workman.** The Bank, as noticed herein before, in response to the lawyer's notice categorically stated that the workman had been carrying on some business elsewhere. We cannot accept the submission of Mr. Mathur that only because on a later date an application for grant of medical leave was filed, the same ipso facto would put an embargo on the exercise of the jurisdiction of the Bank from invoking clause (2) of the bipartite settlement.

It may be true that in a case of this nature, the principles of natural justice were required to be complied with but the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient



compliance of the requirements of the principles of natural justice.

*Yet again in terms of the memorandum dated 20.02.1984, attention of the workman was drawn to the fact that his application for grant of leave was neither in the prescribed form nor any medical certificate was attached thereto. It was pointed out that the medical certificate shows that he was under the doctor's treatment from 22.10.1983 to 22.01.1984 and as such he should have reported for duties on 23.01.1984 and as he failed to do so, it gave rise to an inference that he was not interested to continue in Bank's services. **He did not submit any satisfactory explanation nor he filed any valid medical certificate.** It was in that situation, the order dated 17.05.1984 was issued which again referred to the provisions contained in memorandum of settlement dated 08.09.1983. The workman ex facie appears to have accepted the said order as for a long period he maintained silence. Had he been interested in the Bank's services, it was expected of him to resume his duties and/or file proper application for grant of medical leave with a valid medical certificate.*

*The principle of natural justice, it is trite, is no unruly horse. **When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply.** [See Dr. Gurjeewan Garewal (Mrs.) Vrs. Dr. Dumitra Dash (Mrs.) and Ors., (2004) 5 SCC 263]. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. [See State of Punjab Vrs. Jagir Singh, (2004) 8 SCC 129] and Karnataka State*



Road Transport Corporation and Anr. Vrs. S.G. Koturappa and Anr., (2005) 2 SCALE 493.”

9.3. Though the aforesaid case is founded upon different context, this Court taking substance therefrom would wish to refer that the Hon'ble Supreme Court of India upon perusal of medical certificate observed as above indicating purpose of adherence to the norms of natural justice. In the instant case, in absence of evidence like application praying therein for grant of leave from 01.01.2016 till 17.03.2016 and the medical certificate as required under the Odisha Leave Rules, 1966 read with relevant provisions contained in the Odisha Service Code, this Court does not find genuineness of claim of the petitioner. Close scrutiny of the representation dated 29.03.2022, which gave rise to issue of direction to the competent authority to consider such representation *vide* Order dated 03.11.2022 passed in W.P.(C) No.28842 of 2022, it has come to fore that the petitioner admitted to have remained on leave (of course, without permission from the authority concerned) from 20.01.2016 to 14.02.2016 and 11.03.2016 to 17.03.2016. There is no explanation proffered by the petitioner whether he reported to the duty or remained on unauthorised leave from 01.01.2016 to 19.01.2016 and 15.02.2016 to 10.03.2016.



9.4. The provisions of Rule 13 and Rule 17 of the Odisha Leave Rules, 1966, read as follows:

“13. (1) Extraordinary leave may be granted to any Government servant in special circumstances—

- (i) When no other leave is by rule admissible, or*
- (ii) When other leave is admissible, but the Government servant concerned applies in writing for the grant of extraordinary leave.*

(2) Except in the case of a permanent Government servant and a Government Servant who has rendered not less than three years continuous service, the duration of extraordinary leave on any one occasion shall not exceed the following limits, namely—

- (i) two months;*
- (ii) four months in special cases, where such leave is supported by a medical certificate as required under the rules;*
- (iii) eighteen months where the Government servant is undergoing treatment for—*
 - (a) pulmonary tuberculosis either in a recognised sanatorium or at his residence under a tuberculosis specialist recognised as such by the State Administrative Medical Officer concerned: or*
 - (b) tuberculosis of any other part of the body by a qualified tuberculosis*



specialist or a Chief District Medical Officer; or

- (c) leprosy, in are cognised leprosy institution, or by a Chief District Medical Officer or a specialist in leprosy recognised as such by the State Administrative Medical Officer Concerned:*

Provided that concession of extraordinary leave up to eighteen months under Clause (iii) of this sub-rule shall be admissible only to those Government servants who have been in continuous Government service for a period exceeding one year:

Provided further that in the case of treatment of pulmonary tuberculosis at the residence, the Government servant shall produce a certificate from a specialist to the effect that he is under his treatment and that he has reasonable chances of recovery on the expiry of the leave recommended.

- (3) Subject to the provision of Rule 14, a Government servant not in permanent employ may be granted during deputation on training, extraordinary leave from the date of his relief till the date of resumption of duties on return from training:*

Provided that he has completed a minimum period of one year continuous service on the date of deputation and the authority competent to grant the leave is satisfied that such training



is necessary for improving the Government servant's professional knowledge,

- (4) *Where a Government servant who is not in permanent employ fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where such Government servant who is granted a lesser amount of extraordinary leave than the maximum amount admissible, remains absent from duty for any period which together with the extraordinary leave granted exceeds the limit up to which he could have been granted such leave under these rules, he shall, unless the State Government view of the exceptional circumstances of the case otherwise determine, be removed from service after following the procedure laid down in Orissa Civil Services (Classification, Control and Appeal) Rules, 1962.*

17. (1) *Except as provided in sub-rule (2), a Government servant on earned leave is entitled to leave salary equal to the average monthly pay earned during the ten complete months immediately preceding the month in which the leave commences or the substantive pay to which the Government servant is entitled immediately before the commencement of the leave, whichever is greater.*

- (2) *A Government servant who proceeds on earned leave from a post, the maximum of which does not exceed Rs.100 per mensem, is entitled to leave salary equal to the pay drawn immediately before proceeding on leave.*



- (3) *A Government servant on half-pay leave or leave not due is entitled to leave salary equal to half the amount specified in sub-rule (1) or sub-rule (2), as the case may be, subject to a maximum of Rs.750:*

Provided that this limit shall not apply if the leave is on medical certificate or for pursuing an approved course of study, otherwise than on study leave terms.

- (4) *Subject to the condition that his leave salary shall in no case exceed the amount admissible under sub-rule (1) or sub-rule (2) the leave salary drawn by a Government servant on leave out of India and Nepal is subject to a minimum of Rs.250 per mensem.*
- (5) *A Government servant on commuted leave is entitled to leave salary equal to the amount admissible under sub-rule (1) or sub-rule (2), as the case may be.*
- (6) **A Government servant on extraordinary leave is not entitled to any leave salary.**

Explanation.1:

In respect of any period spent on foreign service out of India, the pay which the Government servant would have drawn if on duty in India but for foreign service out of India shall be substituted for the pay actually drawn while calculating average pay.

Explanation.2:

For the purpose of this rule 'substantive pay' means the substantive pay of the permanent



post which the Government servant holds substantively or on which he holds a lien or would hold a lien, had the lien not been suspended and includes special pay shown as part of the scale of pay of the post.”

- 9.5. Sri Rama Krishna Bisoi, learned Advocate could not be able to demonstrate that the petitioner has fulfilled the conditions envisaged in the Odisha Leave Rules as stated hereinabove. This Court finds from Rule 130 and Rule 131 of the Odisha Service Code that any leave admissible may be granted by the State Government and the leave cannot be claimed “*as of right*”. It is further made clear therein that “*when the exigencies of the public service so requires, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it*”.
- 9.6. The claim of the petitioner is that he availed the leave on account of ill-health. If this is acceded to, as per Rule 140 of the Odisha Service Code, he was required to produce medical certificate of fitness in the format prescribed therewith. The impugned Order does not speak about such a certificate being produced by the petitioner nor does the same find place in the writ petition. Rule 144 of the Odisha Service Code further specifies that a Government servant, who remains absent after the end of his leave, is entitled to no leave salary for the period of such absence, and that period



will be debited against his leave account as though it were leave on half average pay, unless his leave is extended by the State Government and wilful absence from duty after the expiry of leave may be treated as misconduct for the purpose of Rule 54. There is no quarrel that mere acknowledgement of a leave application would not amount to approval or sanction of the leave. These are two different things altogether. Nothing is available on record to suggest that the petitioner was granted leave by the competent authority as required under the provisions stated above.

9.7. Meaning of the word “leave” has been taken cognizance of in *Rasesh C. Choksi Vrs. State of Gujarat*, (1977) 4 SCC 545, wherein it has been reflected as follows:

“10. In the instant case, having regard to the language of Rule 23 doubtless the word “leave” has been used as a verb and not as a noun. Taking the word in its ordinary parlance if used as a verb it clearly connotes that the candidate should have given up the job or quitted the service or severed all connections with the post that he was holding. If the word “leave” would have been used as a noun in the sense of obtaining leave or furlough then the concept of permission would undoubtedly have to be considered.

11. In Black’s Law Dictionary, Revised Fourth Edn. at p. 1036 the author referring the case of Landreth Vrs. Casey, 340 III 519, 173 NE 84, 85 observes as follows:



‘Wilful departure with intent to remain away, and not temporary absence with intention of returning.’

12. *To the same effect is the definition of the word “leave” when used as a verb in Webster’s New International Dictionary at p. 1287 where it has been defined as meaning ‘desert, abandon, forsake, to give up the practice, to quit service and the alike’.*
13. *In Webster’s New World Dictionary at p. 834 the word “leave” when used as a verb has been defined thus:*

‘To go away from, to give up, abandon, forsake, to stop working for, depart or set out.’
14. *In the Concise Oxford Dictionary the word “leave” has been defined as “quit, go away from, depart”.*
15. *Similarly in Shorter Oxford English Dictionary, Vol. I at p. 1122 the word “leave” has been defined when used as a verb as “to depart from, quit relinquish, to go away from permanently, to abandon, forsake, to cease, desist from, stop”.*
16. *In the Random House Dictionary of the English Language at p. 816 the word “leave” has been defined when used as a noun as “permission to do something, to beg leave to go elsewhere, permission to be absent as from duty”, when used as a verb it means “a parting, departure, farewell”.*
17. *In Stroud’s Judicial Dictionary, Third Edn., p. 1606 when used as a verb “leave” means “going away from, depart, sail”.*
18. *Aiyar in Law Lexicon of British India at p. 715 observes as follows:*



*‘Leave, as a noun, permission. As a verb, according to the context or the intent with which it is employed the word may mean to abscond, to deliver, to depart, to get off, to give, to go away from, to quit.’ ***”*

9.8. Regard may be had to a decision in *State of Punjab Vrs. Dr. P.L. Singla*, (2008) 11 SCR 600, wherein it has been observed that:

“8. **Unauthorized absence (or overstaying leave), is an act of indiscipline.** Whenever there is an unauthorised absence by an employee, two courses are open to the employer. **The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.**

9. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceeding in regard to the said



misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. We may note here that a request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in Security services where discipline is of utmost importance, even a few of days overstay is viewed very seriously. Be that as it may.”

9.9. An employee who is absent from duty without proper authorization is strictly not entitled to any pay and allowances. The unauthorized period is typically treated as *dies non* (a day that does not count) for increments, leave accumulation, and pension.

9.10. On the one hand the petitioner had chosen to pursue WPC (OAB) No.31 of 2018 for grant of stay of the departmental proceeding till finalisation of criminal case, which in fact this Court granted in his favour *vide* Order dated 09.09.2022, on the other hand nothing is placed on record to show the reason for non-finalisation of criminal case before the learned Sub-Divisional Judicial Magistrate, Udala in G.R. Case No.73 of 2016. The Director, Elementary Education having referred to Rule 66 of the Odisha Civil Services (Pension) Rules aptly stated that where the judicial proceeding and the



departmental proceeding are pending on the date of retirement, the delinquent-employee shall be paid a provisional pension. In the present case, since the departmental proceeding and the criminal case are pending, the petitioner may be entitled to provisional pension. Therefore, acceding to the prayer of the petitioner that “disburse the provisional pension of petitioner as per Rule 66 of the Odisha Civil Services (Pension) Rules, 1992 with effect from 01.06.2018 onwards” this Hon’ble Court directed in W.P.(C) No.7640 of 2020, *vide* Order dated 09.02.2024, to release the provisional pension as due and admissible in favour of the petitioner with effect from June, 2018, as the petitioner got retired with effect from 31.05.2018.

9.11. It may not be out of place to have reference to the *doctrine of approbate and reprobate* as enunciated in *Union of India Vrs. N. Murugesan, (2021) 10 SCR 253*:

“Approbate and Reprobate:

26. *These phrases are borrowed from the Scott’s 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. We would like to quote the following judgments for better appreciation and understanding of the said principle:

Nagubai Ammal Vrs. B. Shama Rao, 1956 SCR 451:

‘But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No.100 of 1919-20 are not collusive, not on the ground of res judicata or estoppels but on the principle that a person cannot both approbate and reprobate, it is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. Vrs. Hull and Netherlands Steamship Company Ltd.*, (1921) 2 KB 608, and in particular, the observations of Scrutton, LJ, at page 611 were quoted in support of this position. There, the facts were that an agent



delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree. Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J.:

‘Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act’.

The observations of Scrutton, LJ on which the appellants rely are as follows:

*‘A plaintiff is not permitted to ‘approbate and reprobate’. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election—namely, that no party can accept and reject the same instrument: Ker Vrs. Wauchope, (1819) 1 Bli 1, 21; Douglas-Menzies Vrs. Umphelby, (1908) AC 224, 232. The doctrine of election is not however confined to instruments. **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. That is to approbate and reprobate the transaction’.

It is clear from the above observations that the maxim that a person cannot ‘approbate and reprobate’ is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury’s Laws of England, Vol. XIII, p. 464, para 512:

*‘On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. **Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it.**’*

State of Punjab Vrs. Dhanjit Singh Sandhu, (2014) 15 SCC 144:

‘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 Vrs. 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 Vrs. Balwant Regular Motor Service, AIR 1969 SC 329.)*

In R.N. Gosain Vrs. Yashpal Dhir, (1992) 4 SCC 683 this Court has observed as under:

‘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 and Investment Corpn. Vrs. Diamond and Gem Development Corpn. Ltd., (2013) 5 SCC 470, 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.'*

Rajasthan State Industrial Development & Investment Corpn. Vrs. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470:

"I. Approbate and reprobate

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 Vrs. B. Shama Rao, AIR 1956 SC 593, CIT Vrs. V. MR. P. Firm Muar, AIR 1965 SC 1216, Ramesh Chandra Sankla Vrs. Vikram Cement [(2008) 14 SCC 58 = AIR 2009 SC 713, Pradeep Oil Corpn. Vrs. MCD, (2011) 5 SCC 270 = AIR 2011*



SC 1869, Cauvery Coffee Traders Vrs. Hornor Resources (International) Co. Ltd., (2011) 10 SCC 420 and V. Chandrasekaran Vrs. Administrative Officer, (2012) 12 SCC 133.]

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 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 it is his duty to speak, from asserting a right which he would have otherwise had.**’ ***”*

9.12. It is unjustified to reap the benefit of protection against culmination of the departmental proceeding with respect to allegation of fake certificate being utilised for securing the employment at one time and claiming that the petitioner is entitled to duty pay salary for the period he remained absent from duty without grant of approval or application for leave. Though the petitioner got retired in the year 2018, for disbursal of such duty pay salary relating to 2016 he has approached this Court in the year 2024 (conspicuously after eight years). Such delay being not explained cannot be condoned. It is a fit case where the cost ought to be imposed upon the petitioner for abusing the process of law; however, taking into consideration that the petitioner had retired way back in



the year 2018, this Court restraint from imposing any costs.

9.13. It is not demonstrated by necessary pleading by supporting document that the petitioner had applied for leave from 20.01.2016 to 14.02.2016 and 11.03.2016 to 17.03.2016. It is not the case of the petitioner that he worked from 01.01.2016 to 19.01.2016 and from 15.02.2016 to 10.03.2016; nor has shown that he was entitled to any other kind of leave in his leave account. It does emanate from record that the petitioner remained unauthorizedly absent for the aforesaid period. Under the above premises, it is crystal clear from the provisions and factual position as narrated hereinabove that the petitioner is not entitled to duty pay salary for the periods from 01.01.2016 to 17.03.2016, which can only be considered, if circumstances so warrant, after culmination of the departmental and the criminal proceedings.

10. Vital material facts supported by documents are withheld by the petitioner. On account of paucity of material, it is not evinced that the petitioner at any point of time had applied to the competent authority for grant of leave from 01.01.2016 till 17.03.2016. In view of discussions made in the foregoing paragraphs and reasons ascribed to be coupled with the reasons assigned by the Director, Elementary Education in the



impugned Office Order dated 16.05.2023, there is no other option left for this Court than to dismiss the writ petition, being found devoid of merit. Needless to clarify that in view of Order dated 09.09.2022 passed in WPC (OAB) No.31 of 2018 of this Court directing for expediting and finalising the criminal case, the same be strictly enforced. Having taken notice of said order granting stay of departmental proceeding till finalisation of criminal case, it is hoped and trusted that the petitioner shall cooperate with not only in the criminal case in G.R. Case No.73 of 2016, stated to be pending before the learned Sub-Divisional Judicial Magistrate, Udala, but also after finalisation of said criminal case participate in the departmental proceedings to facilitate the authority concerned to arrive at logical conclusion. The Office Order No.11700— 6S-6-2022-VI, dated 16.05.2023 (Annexure-3) of the Director, Elementary Education, Odisha, Bhubaneswar rejecting the representation dated 29.03.2022 of the petitioner cannot, thus, be faulted with.

- 11.** *Ex consequenti*, the writ petition is dismissed; but in the circumstances, there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE